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Highlights

38284 **Food Additive-Aspartame** HHS/FDA issues Commissioner's final decision on and approves petition for safe use of aspartame. (Part IV of this issue)

38318 **Hazardous Waste** EPA announces effective dates of interim final permitting standards for hazardous waste tanks, container storage facilities, piles, storage surface impoundments and hazardous waste incinerators. (Part VI of this issue)

38280, 38282 **Health Care** HHS and HHS/HCFA proposes to revise and consolidate current rules on Federal financial participation in equipment cost under the Medicaid Program and HHS supported public assistance programs. (2 documents) (Part III of this issue)

38105 **Energy Conservation** FTC proposes energy labeling requirements for pulse combustion and condensing furnaces.

38065 **Peanuts** USDA/FCIC changes peanut insurance program coverage policy from one based on amount of insurance to one based on production guarantee.

38074 **Occupational Exposure to Lead** Labor/OSHA denies petitions for stays of new trigger levels for medical removal protection under lead standard and gives notice of variance applications and interim orders.

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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.

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38310 **Food Assistance** USDA/FNS announces intention to conduct, establishes procedures for, and seeks applications to participate in food bank demonstration project involving emergency food box distribution programs to needy individuals and families. (Part V of this issue)

38081 **Radioactive Waste** NRC proposes licensing requirements for land disposal.

38226 **Minimum Wages** Labor/ESA publishes minimum wages for Federal and federally assisted construction. (Part II of this issue)

38117 **Textiles** CITA increases import restraint levels for certain cotton products from Pakistan and certain wool apparel products from Malaysia. (2 documents)

38067 **Burley Tobacco** USDA/ASCS establishes 1980–81 average market price and 1981–82 penalty rate.

38116 **Trade and Defense** Commerce/Sec'y requests public comment on guidelines for participation by U.S. Government agencies, employees, and agents in international standard-related activities.

38143 **Chemicals** HHS/PHS requests public comment on 13 new chemicals for toxicological testing.

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Rules and Regulations

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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

Federal Crop Insurance Corporation

7 CFR Part 425

[Amendment No. 3]

Peanut Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Interim final rule.

SUMMARY: This rule amends the Peanut Crop Insurance Regulations effective with the 1981 and succeeding crop years by changing the peanut insurance program from one base on an amount of insurance to one based on a production guarantee.

This amendment will become effective immediately for all present peanut crop insurance policyholders whose 1981 crops are protected by the Federal Crop Insurance Corporation unless the policyholder informs the Corporation in writing within 30 days after receiving notification by conversion letter of the policy changes that he desires to remain under the old policy provisions for the 1981 crop year. This amendment is necessary to relieve a restriction imposed on peanut crop insurance policyholders in the 1980 crop year brought about by the short crop of peanuts which led to greatly increased prices per pound for peanuts sold as buyers competed for the available crop. The resulting high prices reduced and, in some cases, eliminated indemnity claims under the provisions of the current peanut crop insurance policy due to the provisions of the policy which provide for coverage based on the total value of the production.

This amendment is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: This interim final rule is effective July 24, 1981.

COMMENT PERIOD DATES: The Federal Crop Insurance Corporation is soliciting public comment on this interim final rule for a period of 60 days following publication. Written comments, data, and opinions must be submitted not later than September 22, 1981, to be sure of consideration.

ADDRESS: Written comments on this interim final rule should be sent to the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202–447–3325.

The Draft Impact Analysis describing the options considered in developing this interim final rule and the impact of implementing each option is available from the above-named individual.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1955 (August 25, 1978), and has been classified as "not significant."

Wayne A. Fletcher, Acting Manager of the Federal Crop Insurance Corporation (FCIC), has determined that an emergency situation exists which warrants less than a 60-day comment period on this action because peanut producers having crop insurance protection under the present peanut insurance policy may ultimately have little or no protection under current market conditions if last year's loss conditions are repeated. Each individual policyholder is to be contacted to have the program change explained in sufficient time to permit the policyholder to choose between the old or new policy before potential losses occur.

Pursuant to the administrative provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim final action are impracticable and contrary to the public interest; and good cause is found for making this action effective less then 30 days after publication in the **Federal Register**.

Comments have been solicited for 60 days after the publication of this document, and this interim action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

All written submissions made pursuant to this action will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

The review date for this action has been established as September 22, 1981.

The Acting Manager of FCIC has also determined that (1) this action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action does not increase the Federal paperwork burden for individuals, small businesses, and other persons in accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), and (3) this action conforms with the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.)*, and other applicable law.

The title and number of the Federal Assistance Program to which this amendment applies is: Title—Crop Insurance; Number 10.450. This action will not have a significant impact specifically on area and community development; therefore, review as established by the Office of Management and Budget (OMB) Circular A–95 was not used to assure that units of local government are informed of this action.

The information gathering and recordkeeping requirements of the regulations to which this amendment applies (7 CFR Part 425) have been approved by OMB under the following control numbers: RMS OMB NBR; 0563–0001; 0563–0003; 0563–0007.

Background.

The present peanut crop insurance program establishes coverage in terms of amounts of insurance. This is arrived at by multiplying the classification yields (as pounds per acre) by the applicable average quota support price per pound for peanuts. This method worked well until the 1980 crop year when, because of adverse weather conditions, peanut production was considerably below normal and buyers competed for available peanuts at substantially higher prices.

Under the provisions of the present peanut crop insurance program, indemnities are computed by subtracting

the value of the total production from the amount of insurance.

Simply stated, the peanut crop insurance policy is expressed in a dollar guarantee and the claim for indemnity must reflect any monies received from the crop. Because of the short crop/high price situation last year resulting in substantially higher prices being paid per pound than normal, claims for losses were reduced or in some cases eliminated.

The potential for the same price situation exists during the 1981 crop year with peanuts presently being contracted for delivery at harvest for 29.5 to 36.5 cents per pound, based on the average quota support grade. Market prices like these are from 130 to 160 percent of the national average quota support price per pound of 22.75 cents. Given these circumstances, the calculated pound guarantees for the 1981 crop year peanuts could be reduced 23 to 38 percent under the present policy depending on the actual amount and quality of production contracted. The peanut crop insurance program cannot operate equitably under such a quota support price/market price imbalance.

To correct this inequity, FCIC is changing the peanut crop insurance program from one based on an amount of insurance to one based on a production guarantee. In view of the potential for a short crop/high price situation again during the 1981 crop year, FCIC is amending the peanut crop insurance program, effective immediately. All present peanut crop insurance policyholders will be affected by this change unless the policyholder notifies FCIC in writing, within 30 days of receiving a letter of conversion explaining the changes, that he desires to remain under the old policy provisions for the 1981 crop year. All old policies will be converted to the new policies effective for the 1982 crop year notwithstanding the election for the 1981 crop year. This action will not increase the liability for the 1981 crop year and no change is required in the rates for such insurance.

Under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Peanut Crop Insurance Regulations (7 CFR Part 425) as published in the **Federal Register** on Wednesday, November 28, 1979, at 44 F.R. 67953–67960, effective with the 1981 crop year. This amendment provides that (1) the peanut crop insurance program is converted from one based on an amount of insurance to one based on a production guarantee, (2) the applicable pounds per acre shown on the actuarial table is the production guarantee per acre, (3) the applicable average quota support price for peanuts is designated as the price for computing indemnities, and (4) the production to count will be adjusted for quality (up or down) using the relationship between value per pound (not counting any premium value per pound paid due to the current market conditions) and the average quota support price per pound.

It has been determined that this action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under the provisions of Secretary's Memorandum No. 1955 (August 25, 1978), and "Improving Government Regulations" (43 F.R. 50986). That review will be completed prior to the sunset review date of November 28, 1984.

Interim Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Peanut Crop Insurance Regulations (7 CFR Part 425), effective with the 1981 crop year, in the following instances:

1. In § 425.7(d), section 4 of the Peanut Crop Insurance Policy is revised to read as follows:

§ 425.7 The application and policy.

* * * * *

(d) * * *

PEANUT CROP INSURANCE POLICY

* * * * *

4. COVERAGE LEVELS, PRODUCTION GUARANTEES, AND PRICES FOR COMPUTING INDEMNITIES. (a) For each crop year of the contract, the production guarantees, coverage levels, and price(s) at which indemnities shall be computed shall be those shown on the actuarial table.

(b) The production guarantee per acre shall be reduced by 20 percent for any unharvested acreage.

2. In § 425.7(d) section 5 of the Peanut Crop Insurance Policy is revised to read as follows:

§ 425.7 The application and policy.

* * * * *

5. ANNUAL PREMIUM. (a) The annual premium is earned and payable at the time of planting and the amount thereof shall be determined by multiplying the insured acreage times the applicable premium per acre, times the insured's share at the time of planting, times the applicable premium adjustment percentage in subsection (c) of this section.

* * * * *

3. In § 425.7(d) section 8 of the Peanut Crop Insurance Policy is revised to read as follows:

§ 425.7 The application and policy.

* * * * *

8. CLAIM FOR INDEMNITY. (a) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of peanuts on the unit and that any loss of production was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation.

(b) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by (1) multiplying the insured acreage of peanuts on the unit by the applicable production guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production of peanuts to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) multiplying the result obtained in step (3) by the insured share: *Provided*, That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation, and shall include all threshed and appraised production as follows:

(1) Threshed production shall be the net weight in pounds shown on the United States Department of Agriculture "Inspection Certificate and Sales Memorandum."

(2) If, due to insurable causes any peanuts are damaged or the value per pound (excluding any premium value) is greater than the applicable average quota support price, the total production to be counted shall be adjusted for quality by (i) dividing the value per pound for the insured type of peanuts (excluding any premium value per pound in excess of the value per pound) as determined by the Corporation, by the applicable average quota support price per pound and (ii) multiplying the result thus obtained by the number of pounds of such production.

(3) Appraised production to be counted shall include (i) any appraisals made by us for potential production on harvested acres, for uninsured causes of loss, and for poor farming practices, (ii) not less than the applicable guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause.

(d) The appraised potential production for acreage for which consent has been given to be put to another use shall be counted as production in determining the amount of loss under the contract. However, if consent is given to put acreage to another use and the Corporation determine that any such acreage (1) is not put to another use before harvest of peanuts becomes general in the county, (2) is harvested, or (3) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall

be determined without regard to such appraisal and consent.

(e) To enable us to determine the net weight of production of any peanuts for which a United States Department of Agriculture "Inspection Certificate and Sales Memorandum" has not been issued, we shall be given the opportunity to have such peanuts inspected and graded before they are disposed of by the insured. If the insured disposes of any production without giving the Corporation the opportunity to have the peanuts inspected and graded, the gross weight of such production shall be used in determining total production to count.

4. In § 425.7(d), section 10 of the Peanut Crop Insurance Policy is revised to read as follows:

§ 425.7 The application and policy.

* * * * *

10. TRANSFER OF RIGHT TO INDEMNITY ON INSURED SHARE. If the insured transfers any part of the insured share during the crop year, the insured may transfer the right to an indemnity on an approved form. The insured shall be liable for the premium if such form is or is not executed. If such form is executed, the transferee shall have the same rights and responsibilities as the original insured for the current crop year.

5. In §425.7(d), subsection (d) of section 12 of the Peanut Crop Insurance Policy is revised to read as follows:

§ 425.7 The application and policy.

* * * * *

12. LIFE OF CONTRACT: CANCELLATION AND TERMINATION.

* * * * *

(d) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (a), (b), and (c) of this section, and section 7 of Appendix A, the contract shall continue in force for each succeeding crop year.

§ 425.7 [Amended]

6. In § 425.7(d), the Appendix to the Peanut Crop Insurance Policy which appeared at 44 FR 67959 (Nov. 28, 1979) and which was entitled "Additional Terms and Conditions" is designated as "Appendix A—Additional Terms and Conditions".

7. In § 425.7(d), in Appendix A to the Peanut Crop Insurance Policy, adopted at 44 FR 67955, section 5(d) is revised to read as follows:

5. CLAIM FOR AND PAYMENT OF INDEMNITY.

* * * * *

(d) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c), as amended: *Provided*, that the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

* * * * *

8. In § 425.7(d), in Appendix A to the Peanut Crop Insurance Policy, section 6 is revised to read as follows:

* * * * *

6. SUBROGATION. The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made by the Corporation. The insured thereafter shall execute all papers required and take appropriate action as may be necessary to secure such rights.

9. In § 425.7(d), in Appendix A to the Peanut Crop Insurance Policy, section 8(a) is revised to read as follows:

* * * * *

8. COVERAGE LEVEL AND PRICE ELECTION. (a) If the insured has not elected on the application a coverage level and price at which indemnities shall be computed from among those shown on the actuarial table, the coverage level and price election which shall be applicable under the contract, and which the insured shall be deemed to have elected, shall be as provided on the actuarial table for such purposes.

* * * * *

(Secs. 506, 516, Pub. L. 75-430, 52 Stat. 72, as amended (7 U.S.C. 1506, 1516))

Approved by the Board of Directors on April 21, 1981.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: July 6, 1981.

Approved by:

Wayne A. Fletcher,

Acting Manager.

[FR Doc. 81-20559 Filed 7-23-81; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Stabilization and Conservation Service

7 CFR Part 726

[Amdt. 1]

Burley Tobacco 1972-73 and Subsequent Marketing Years; 1980-81 Average Market Price and 1981-82 Penalty Rate

AGENCY: Agricultural Stabilization and Conservation Service, Agriculture.

ACTION: Final rule.

SUMMARY: This final rule sets forth the average market price received by producers for their 1980-81 marketings of burley tobacco and the penalty rate per pound for excess marketings of burley tobacco during the 1981-82 marketing year. Marketing quota penalties are prescribed by Section 314 of the Agricultural Adjustment Act of 1938, as amended.

EFFECTIVE DATE: July 24, 1981.

FOR FURTHER INFORMATION CONTACT: Harry D. Millner, Agricultural Program Specialist, Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447-7935. The Final Impact Statement covering this final rule is available on request from Harry D. Millner.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures required by Executive Order 12291, and has been classified as "not major." This final rule has been classified as "not major" since it will not have an annual effect on the economy of $100 million or more.

This action will not have a major impact specifically on area and community development. Therefore, review as established by Office of Management and Budget (OMB) Circular A-95 was not used to assure that units of local government are informed of this action.

Section 314 of the Agricultural Adjustment Act of 1938, as amended, requires that marketing quota penalties be assessed whenever tobacco is marketed in excess of the marketing quota established for the farm on which the tobacco is produced. Section 314 of the 1938 Act further provides that the rate of penalty shall be 75 percent of the average market price for the preceding marketing year. This final rule sets forth the average market price for burley tobacco for the 1980-81 marketing year and the penalty rate for burley tobacco for the 1981-82 marketing year.

Since the 1980-81 average market price producers received for burley tobacco and the rate of penalty for the 1981-82 marketing year merely reflect mathematical computations set forth by statute and no administrative decisionmaking is prescribed, it is hereby determined that no public comment is required.

Accordingly, this final rule shall become effective July 24, 1981.

Final Rule

In § 726.86, paragraph (c) is revised to read as follows:

§ 726.86 Rate of penalty.

* * * * *

(c) (1) *Average market price.* The average market price as determined by the Crop Reporting Board for the marketing years specified were:

Average Market Price

Marketing year	Per pound
1975–76	$1.14
1976–77	1.14
1977–78	1.20
1978–79	1.31
1979–80	1.45
1980–81	1.66

(2) *Rate of penalty per pound.* The penalty per pound for marketings of excess tobacco subject to marketing quotas during the marketing years specified shall be:

Rate of Penalty

Marketing year	Per pound
1976–77	$0.79
1977–78	0.86
1978–79	0.90
1979–80	0.98
1980–81	1.09
1981–82	1.24

(Sec. 301, 313, 314, 316, 317, 363, 372–375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 75 Stat. 469, as amended, 79 Stat. 66, 52 Stat. 63, as amended, 65–66, as amended, 72 Stat. 995, sec. 401, 63 Stat. 1505, as amended, sec. 106, 122, 125, 70 Stat. 191, 195, 198, as amended, sec. 16(e), 76 Stat. 606 (7 U.S.C. 1301, 1313, 1314, 1314b, 1314c, 1363, 1372–1375, 1377, 1378, 1421, 1813, 1824, 1836) (16 U.S.C. 590 p(e)))

Signed at Washington, D.C. on July 15, 1981.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 81-21360 Filed 7-23-81; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 314, Amdt. 1; Lemon Reg. 315]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period July 26–August 1, 1981, and increases the quantity of lemons that may be shipped during the period July 19–25, 1981. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective July 26, 1981, and the amendment is effective for the period July 19–25, 1981.

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

SUPPLEMENTARY INFORMATION: *Findings:* This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other 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. The marketing policy was recommended by the committee following discussion at a public meeting on July 8, 1980. A regulatory 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 July 21, 1981 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons continues good.

It is further found 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), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. 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 times.

Information collection requirements (reporting or record keeping) under this part are subject to clearance by the Office of Management and Budget and are in the process of review. These information requirements shall not become effective until such time as clearance by the OMB has been obtained.

1. Section 910.615 is added as follows:

§ 910.615 Lemon Regulation 315.

The quantity of lemons grown in California and Arizona which may be handled during the period July 26, 1981, through August 1, 1981, is established at 275,700 cartons.

2. Section 910.614 Lemon Regulation 314 (46 FR 37017) is revised to read as follows:

§ 910.614 Lemon Regulation 314.

The quantity of lemons grown in California and Arizona which may be handled during the period July 19, 1981, through July 25, 1981, is established at 350,000 cartons.

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

Dated: July 23, 1981.

D. S. Kuryloski,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 81-21903 Filed 7-23-81; 12:18 p.m.]

BILLING CODE 3410-02-M

7 CFR Part 993

Dried Prunes Produced in California; Changes in Pack Specification; Subpart—Pack Specification as to Size

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule designates the prune size ranges for the nomenclature size categories, Extra large, Large, and Medium, appearing on consumer packages of dried prunes. The nomenclature size category Small, Breakfast, or Petite is elminated from the pack specification. This rule will provide dried prune handlers greater flexibility in packaging the wide range of prune sizes produced each year. The Federal marketing order regulating the handling of California dried prunes authorizes this rule.

EFFECTIVE DATE: August 1, 1981. A transition period ending August 31, 1981, is provided to allow handlers to reduce their inventories of labels bearing the nomenclature size category Small, Breakfast, or Petite.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been determined to be a "nonmajor" rule.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would result in only minimal costs being incurred by the regulated 12 handlers.

Information collection (reporting and recordkeeping) under this part are subject to clearance by the Office of Management and Budget and are in the process of review. These information requirements shall not become effective until such time as clearance by the OMB has been obtained.

Notice of this action was published in the May 15, 1981, issue of the **Federal Register** (46 FR 26786), and interested persons were afforded an opportunity to submit written comments. One comment was received.

It is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The Prune Administrative Committee (PAC) recommended that the changes in this action become effective August 1, 1981, the beginning of the 1981–82 crop year. Handlers will start receiving and packing 1981 crop prunes shortly thereafter, and these changes should be in effect by then to enable handlers to plan accordingly.

The changes in the pack specification as to size were recommended by the PAC, which is established under the marketing agreement and Order No. 993, both as amended (7 CFR Part 993), regulating the handling of dried prunes produced in California (hereinafter both are referred to collectively as the "order"). The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The PAC works with USDA in administering the order.

The pack specification prescribes commercially recognized size categories for the packing of prunes in consumer packages, including nomenclature size categories. The nomenclature size categories currently listed in § 993.515(b) and which will be revised by this rule are as follows:

(1) Extra large; (2) Large; (3) Medium; and (4) Small, Breakfast, or Petite. These size categories are defined in § 993.515(c) in terms of the count of prunes per pound as follows:

(1) "Extra large" means any size count which falls within the range of 36 to 43 prunes, inclusive, per pound;

(2) "Large" means any size count which falls within the range of 43 to 53 prunes, inclusive, per pound;

(3) "Medium" means any size count which falls within the range of 53 to 67 prunes, inclusive, per pound; and

(4) "Small," "Breakfast", or "Petite" means any size count which falls within the range of 67 to 85 prunes, inclusive, per pound.

The nomenclature size categories established by this rule are as follows:

(1) "Extra large" means any size count which falls within the range of 25 to 40 prunes, inclusive, per pound;

(2) "Large" means any size count which falls within the range of 40 to 60 prunes, inclusive, per pound; and

(3) "Medium" means any size count which falls within the range of 60 to 85 prunes, inclusive, per pound.

This change eliminates the nomenclature size designation "Small, Breakfast, or Petite", and broadens the size ranges for the remaining nomenclature size designations.

A reason for eliminating a nomenclature size designation is to improve the marketing of dried prunes in consumer packages. Currently, consumers find a bewildering array of consumer packages of prunes on store shelves. For example, retailers may carry several different brands of whole dried prunes, packed in three or four nonmenclature size categories, and offered in at least two different sized packages. In addition, the retailers may also offer pitted prunes. Reducing the number of package styles by eliminating a nomenclature size category would reduce some of the confusion experienced by consumers in making selections from a myriad of consumer packages.

Reducing the number of package styles would also enable retailers to make more effective utilization of their shelf space. Shelf space, especially in retail supermarkets, is at a premium and there is intense competition for this space. Some supermarkets carry thousands of items, and too many different styles of the same item make inventory control and stocking of shelves difficult.

Finally, elimination of at least one nomenclature size category would make it easier for wholesale and retail buyers to order prunes and maintain adequate inventories.

Broadening the size ranges for the remaining nomenclature size categories would afford handlers greater latitude in utilizing, packing, and marketing the prunes they receive from producers each year. Because the range of sizes currently permitted within each nomenclature size category is relatively narrow, handlers have difficulty maintaining adequate inventories of the various size counts of prunes that can be packaged in each category. Expanding the permitted range for each nomenclature size category would afford handlers greater flexibility in maintaining adequate inventories of the various size ranges to meet their packing need. It is also expected that this flexibility would reduce handlers' inventory costs.

Section 993.517 specifies labeling and identification requirements for consumer packages of prunes and requires, among other things, that prunes in a lot where the maximum size count is less than 36 marked clearly by the handler in terms of applicable numerical designation prescribed in § 993.515(a). The size count of 36 is currently at the lower end of the range of the Extra large size category. Since this action would change that limit to 25, the size count of 36 in § 993.517, should be changed to 25 as a conforming change.

One comment was received from the PAC recommending that a transition period beyond the August 1, 1981, effective date be provided to allow handlers to reduce their inventories of packaging materials bearing the nomenclature size category Small, Breakfast, or Petite.

The Department has determined that a transition period ending August 31, 1981, would allow handlers sufficient time to reduce their inventories of those labels, thereby imposing minimal financial burdens on handlers. Packaging materials for prunes are very expensive and several handlers have substantial inventories of labels bearing that nomenclature.

The Committee also recommended that handlers be allowed to pack consumer packages of prunes under this change prior to the effective date, with the understanding that such packages would not be shipped to retail outlets before the effective date. Nothing in the order or in this rule would prohibit handlers from following this procedure.

After consideration of all relevant matter presented, including that in the notice, the comment submitted, and other available information, it is hereby found that Subpart—Pack Specification as to Size (7 CFR 993.501–993.518) should read as follows:

1. Paragraphs (b) and (c) of § 993.515 are revised to read as follows:

Subpart—Pack Specification as to Size

* * * * *

§ 993.515 Size categories.

* * * * *

(b) *Nomenclature designations.* Each of the following is a nomenclature size category:

(1) Extra large;

(2) Large; and

(3) Medium

(c) *Nomenclature designations defined.* As used in paragraph (b) of this section:

(1) "Extra large" means any size count which falls within the range of 25 to 40 prunes, inclusive, per pound;

(2) Large" means any size count which falls within the range of 40 to 60 prunes, inclusive, per pound; and

(3) "Medium" means any size count which falls within the range of 60 to 85 prunes, inclusive, per pound.

* * * * *

§ 993.517 [Amended]

2. The last sentence of § 993.517 is amended by changing the number "36" to "25". As amended, that sentence reads, in part: "Prunes in any lot of which the maximum size count is less than 25 shall be clearly marked by the handler in terms of the applicable numerical designation prescribed in § 993.515(a);".

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

Dated July 21, 1981, to become effective August 1, 1981, except that handlers may continue to pack consumer packages of prunes labeled Small, Breakfast, or Petite, as those terms are now defined in § 993.515(c)(4), until August 31, 1981.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 81-21700 Filed 7-23-81; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 312 and 316

[Docket No. 80-039F]

Official Marking Devices for Imported Products; Use of Hexagon-Shaped Brands for Imported Horsemeat and Other Equines

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Federal meat inspection regulations to require a hexagon-shaped brand to be used to apply the official import inspection legend on horsemeat and other equine meat and meat food products in order to identify the products as imported, inspected and passed. It also requires each official import inspection establishment to furnish the official marking devices used in its establishment rather than having them furnished by the Department.

EFFECTIVE DATE: July 21, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. John C. Prucha, Director, Slaughter Inspection Standards and Procedures Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Food Safety and Inspection Service (FSIS) has determined, in accordance with Executive Order 12291, that this final rule is not a "major rule". No significant costs or requirements are being imposed on the affected industry. The only cost impact on the affected industry would be the price of the marking devices that each official import inspection establishment would have to purchase. Consequently, the implementation of this rule should not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Background

On December 12, 1980, FSIS (previously Food Safety and Quality Service), published a proposed rule in the **Federal Register** (45 FR 81764) to amend the Federal meat inspection regulations (9 CFR Parts 312) and 316) to require (1) a hexagon-shaped official inspection legend to be used to identify all inspected and passed horse and other equine meat and meat food products, and (2) official import inspection establishments to furnish the import brands used in their establishments.

Part 312 of the Federal meat inspection regulations (9 CFR Part 312 currently requires a hexagon-shaped official inspection legend to be used at official establishments to identify federally inspected and passed carcasses, parts of carcasses and meat food products of horses, mules or other equines slaughtered in the United States. Part 312 also currently requires a circle-shaped inspection legend to be used to identify federally inspected and passed carcasses, parts of carcasses, and meat food products of other animal species, namely cattle, sheep, swine and goats slaughtered in the United States. However, § 312.7 of the federal meat inspection regulations (9 CFR 312.7) requires the circle-shaped inspection legend to be applied to inspected and passed imported meat and meat food products. Accordingly, a circle-shaped inspection legend currently is required to be applied to all federally inspected and passed carcasses, parts of carcasses and meat food products of cattle, sheep, swine and goats, and imported carcasses, parts of carcasses and meat food products of horses, mules or other equines; however, a hexagon-shaped inspection legend is required to be applied to domestic carcasses, parts of carcasses and meat food products of horses, mules, or other equines.

This rule amends § 312.7 to make it consistent with the other provisions of that part and requires a hexagon-shaped brand to be used to apply the official import inspection mark on inspected and passed horse or other equine meat and meat food products, regardless of whether the meat of meat food product is imported or domestic.

This rule also requires each official import inspection establishment to furnish the brands or any other device used to mark products at its establishment. This rule eliminates the current inconsistency in the regulations which requires only domestic official establishments to furnish the brands or marking devices used at their establishment.

As a result of the proposal, 23 comments were received from 14 individuals, 3 State meat inspection program officials, 1 foreign country, 2 beekeeper associations, 1 beekeeper, 1 beekeeper attorney, and the National Pork Producers' Council. Seventeen comments generally supported the proposal while 6 comments opposed the use of the hexagon brand. No comments were received on the proposal that official import inspection establishments furnish their import brands. The objecting comments raised two issues:

1. Four of the comments opposing the use of the hexagon-shaped brand were from persons associated with the

[1] Pursuant to the reorganizational plans outlined in USDA Secretary's Memo 1000-1, issued June 17, 1981, the Food Safety and Quality Service has become the Food Safety and Inspection Service. A notice detailing the Agency's reorganization is now being drafted for later publication.

beekeeping industry who claimed that this import brand may be confused with honey and other bee related products because the hexagon shape has long been associated with bees and beehives. The Wyoming Department of Agriculture similarly objected because the brand currently used to identify Wyoming inspected meat products is hexagonal. The Agency believes that since the hexagonal brand has been used on federally inspected domestic horsemeat for over 60 years and the word "horsemeat" or "equine-meat" appears inside the hexagon to clearly identify the product, there is no evidence that there actually will be confusion.

2. The Canadian Department of Agriculture expressed concern that the brand would be an additional requirement on the exporting country. This would not be the case since the brand is applied at the official import establishment in the United States to identify meat and meat food products that have been federally inspected and passed.

In consideration of the foregoing, the Federal meat inspection regulations (9 CFR Parts 312 and 316) are revised to read as follows:

1. The authority citation for Parts 312 and 316 reads as follows:

Authority: (34 Stat. 1264, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438, 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 466–466k).

2. Section 312.7(a), (b), and (d) (9 CFR 312.7(a), (b), and (d)) are revised to read as follows:

§ 312.7 Official import inspection marks and devices.

(a) When import inspections are performed in official import inspection establishments, the official inspection legend, as required by Part 327 of this subchapter, to be applied to imported meat and meat food products shall be in the approprite form [2] as herein specified.

[2] The number "I–38" is given as an example only. The establishment number of the official import inspection establishment where the imported product is inspected shall be used in lieu thereof.



For application to cattle, sheep, swine, and goat carcasses, primal parts, and cuts, not in containers.



For application to outside containers of meat and meat food products prepared from cattle, sheep, swine, and goats.



For application to horse carcasses, primal parts, and cuts, not in containers.



For application to outside containers of horsemeat food products.



For application to mule and other (nonhorse) equine carcasses, primal parts, and cuts, not in containers.



For application to outside containers of equine meat food products.

(b) When import inspections are performed in official establishments, the official inspection legend, as required by Part 327 of this subchapter, to be applied to imported meat and meat food products, shall be the appropriate form as specified in §§ 312.2 and 312.3 of this Part.

* * * * *

(d) Devices for applying "United States Refused Entry" marks shall be furnished to Program inspectors by the Department.

3. Section 316.4(a) (9 CFR 316.4(a)) is revised to read as follows:

§ 316.4 Marking devices; to be furnished by official establishments; control of.

(a) The operator of each official establishment or official import inspection establishment shall furnish such ink brands, burning brands, and any other device for marking products with official marks as the Administrator may determine is necessary for marking products at such establishment. The official inspection legend on such a device shall be as prescribed in Part 312 of this subchapter.

* * * * *

Done at Washington, D.C. on July 8, 1981.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 81-21656 Filed 7-23-81; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 81F-0081]

21 CFR Part 172

Food Additives Permitted for Direct Addition to Food for Human Consumption; Fish Protein Isolate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the food additive regulations to provide for the safe use of fish protein isolate as a food supplement. This action is being taken in response to a petition filed by Concentrados Marinos, S.A., Lima, Peru.

DATES: Effective July 24, 1981; objections by August 24, 1981.

ADDRESS: Written objections may be sent to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

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

SUPPLEMENTARY INFORMATION: Notice was published in the **Federal Register** of April 3, 1981 (46 FR 20303) that a food additive petition (FAP 1A3538) had been filed on behalf of Concentrados Marinos, S.A., P.O. Box/Casilla 4441, Lima 100, Peru, proposing that Subpart D of Part 172 (21 CFR Part 172) of the food additive regulations be amended by adding a new section to provide for the safe use of fish protein isolate as a food supplement.

Having evaluated data in the petition and other relevant material, FDA concludes that the proposed food additive use is safe and that Part 172 should be amended as set forth below.

The agency has considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's findings of no significant impact and its environmental assessment may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Subpart D of Part 172 is amended by adding new § 172.340, to read as follows:

§ 172.340 Fish protein isolate.

(a) The food additive fish protein isolate may be safely used as a food supplement in accordance with the following prescribed conditions:

(1) The additive shall consist principally of dried fish protein prepared from the edible portions of fish after removal of the heads, fins, tails, bones, scales, viscera, and intestinal contents.

(2) The additive shall be derived only from species of bony fish that are generally recognized by qualified scientists as safe for human consumption and that can be processed as prescribed to meet the required specifications.

(3) Only wholesome fresh fish otherwise suitable for human consumption may be used. The fish shall be handled expeditiously under sanitary conditions. These conditions shall be in accordance with recognized good manufacturing practice for fish to be used as human food.

(4) The additive shall be prepared by extraction with hexane and food-grade ethanol to remove fat and moisture. Solvent residues shall be reduced by drying.

(b) The food additive meets the following specifications: (Where methods of determination are specified, they are Association of Official Analytical Chemists Methods, 13th ed., 1980, which are incorporated by reference).[1]

(1) Protein content , as N X 6.25, shall not be less than 90 percent by weight of the final product, as determined by the method described in section 2.057, Improved Kjeldahl Method for Nitrate-Free Samples (20)—Official Final Action.

(2) Moisture content shall not be more than 10 percent by weight of the final product, as determined by the method described in section 24.003, Air Drying (1)—Official First Action.

(3) Fat content shall not be more than 0.5 percent by weight of the final product, as determined by the method described in section 24.005, Crude Fat or Ether Extract—Official Final Action.

(4) Solvent residues in the final product shall not be more than 5 parts per million of hexane and 3.5 percent ethanol by weight.

(5) The viable microbial content of the final product shall be:

(i) Less than 10,000 organisms/gram by aerobic plate count.

(ii) Less than 10 yeasts and molds/gram.

(iii) Negative for *Salmonella, E. coli,* coagulase positive *Staphylococci, Clostridium perfringens, Colstridium botulinum,* or any other recognized microbial pathogen or any harmful microbial toxin.

Any person who will be adversely affected by the foregoing regulation may at any time on or before August 24, 1981 submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any

[1] Copies are available from: Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or examined at the Office of the Federal Register, 1100 L St. NW, Washington, DC 20408.

particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective July 24, 1981.

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

Dated: July 10, 1981.

Note.—Incorporation by reference provisions approved by the Director, Office of the Federal Register on July 17, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-21328 Filed 7-17-81; 11:53 am]

BILLING CODE 4110-03-M

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21 CFR Parts 700, 710, 720, and 730

[Docket No. 80N-0346]

Modification in Voluntary Registration of Cosmetic Industry Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reducing the reporting burden of the persons voluntarily participating in the registration of cosmetic product establishments and the filing of cosmetic product formulations, raw material compositions, and consumer adverse reactions. The reduction will have no significant effect on the quality of the cosmetics registration programs.

EFFECTIVE DATE: This rule becomes effective August 24, 1981.

FOR FURTHER INFORMATION CONTACT: Earl L. Richardson, Bureau of Foods (HFF-444), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1094.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 7, 1980 (45 FR 73960), FDA proposed to reduce the reporting burden of the persons participating in the voluntary cosmetics registration program by eliminating certain items of information. The voluntary registration program provides for the registration of cosmetic product establishments (21 CFR Part 710), filing of cosmetic product ingredient and cosmetic raw material composition statements (21 CFR Part 720), and filing of cosmetic product experiences (21 CFR Part 730). A review of the reporting requirements and impact of the reported information on the quality of the voluntary registration and filing programs had demonstrated that these items could be eliminated without significantly affecting the respective data files. It was also expected that exclusion of these items would motivate other cosmetic product manufacturers and distributors to beome participants. Interested persons were given until January 6, 1981, to submit written comments about the proposed elimination of the specified data elements.

One comment was received during the comment period in support of the proposed regulation. The comment, from a cosmetic trade association, fully supported the proposed modification in the voluntary registration of cosmetic industry data. It agreed that the proposed reduction would facilitate registration without diminishing the quality of the voluntary registration program and that the changes might encourage other companies to participate in the program.

The regulation will become effective as proposed. Revised forms FD-2511, FD-2512, FD-2513, FD-2514, and FD-2704 are available from FDA. The regulation does not require resubmission of previously registered data.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 301, 601, 602, 701(a), 52 Stat. 1042–1043 as amended, 1054 as amended, 1055 (21 U.S.C. 321(n), 331, 361, 362, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Title 21 of the Code of Federal Regulations is amended as follows:

PART 700—GENERAL

§ 700.3 [Amended]

1. In § 700.3 *Definitions,* by removing paragraph (r).

PART 710—VOLUNTARY REGISTRATION OF COSMETIC PRODUCT ESTABLISHMENT

§ 710.4 [Amended]

2. In § 710.4 *Information requested,* by removing the phrase "the kind of ownership or operation (e.g., individually owned, partnership, or corporation)" and by revising the parenthetical words "(manufacturer, packer, and/or distributor)" to read "(manufacturer and/or packer)."

PART 720—VOLUNTARY FILING OF COSMETIC PRODUCT INGREDIENT AND COSMETIC RAW MATERIAL COMPOSITION STATEMENTS

§ 720.4 [Amended]

3. In § 720.4 *Information requested about cosmetic products,* by removing the second sentence of paragraph (d)(2) and footnotes (1) through (4) and by adding in the third sentence the parenthetical abbreviation "(CRMCS)" between the words "statement" and "number."

§ 720.5 [Amended]

4. In § 720.5 *Information requested about cosmetic raw materials,* by removing the third sentence of paragraph (c)(1) and footnotes (1) through (4) and by adding in the fourth sentence the parenthetical abbreviation "(CRMCS)" between the words "statement" and "number."

PART 730—VOLUNTARY FILING OF COSMETIC PRODUCT EXPERIENCES

§ 730.1 [Amended]

5. In § 730.1 *Who should file,* by removing the phrases "or a Form FD-2705 (Cosmetic Product Unusual Experience Report)," "and unusual reportable experiences," and "or unusual reportable experience."

§ 730.2 [Amended]

6. In § 730.2 *Time for filing,* by removing paragraph (b).

§ 730.3 [Amended]

7. In § 730.3 *How and where to file,* by removing the phrase "Form FD-2705 (Cosmetic Product Unusual Experience Report)" and the comma preceding it; by changing the name "Industry Guidance Branch" to read "Industry Programs Branch" and by removing the last sentence.

8. In § 730.4 by revising paragraph (a)(5) and by removing paragraphs (a)(7) and (8) and (b); by removing paragraph (c)(5); by removing in the introductory text of paragraph (d) the phrase "Form FD-2705 (Cosmetic Product Unusual Experience Report)" and the commas preceding and following it; by removing in paragraph (d)(1) and (3) the reference "(b)" and the commas preceding and following it; and by changing in paragraph (e) the reference "paragraphs (a) and (b)" to read "paragraph (a)."

§ 730.4 Information requested.

(a) * * *

(5) Total number of reportable experiences during this reporting period and number of these experiences requiring professional medical attention.

* * * * *

(7)–(8) [Reserved]

* * * * *

(b) [Reserved]

* * * * *

§ 730.7 [Amended]

9. In § 730.7 *Confidentiality of reports,* by removing "2705."

In accordance with Executive Order 12291, FDA has determined that this final rule does not constitute a "major rule" as defined by that order. The effect of this final rule is to lessen the economic costs so that more members of the cosmetic industry will participate in the voluntary registration of cosmetic industry data.

Effective date. The modification in voluntary registration of cosmetic industry data becomes effective on August 24, 1981.

(Secs. 201(n), 301, 601, 602, 701(a), 52 Stat. 1041–1043 as amended, 1054 as amended, 1055 (21 U.S.C. 321(n), 331, 361, 362, 371(a)))

Dated: July 8, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-21699 Filed 7-23-81; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 115

Payment of Sioux Benefits; Eligibility Criteria and Application Procedures Governing Benefits

Correction

In FR Doc. 81–20511, appearing at page 36135 in the issue of Tuesday, July 14, 1981, the ninth line of § 115.5(c) on page 36137, column two, should have read, "administrative appeal procedures of 43 CFR".

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–004M]

Occupational Exposure to Lead, New Trigger Levels for Medical Removal Protection; Denial of Petitions for Stays; Notice of Variance Applications; Interim Orders

Note.—This document originally appeared in the **Federal Register** for Thursday, July 23, 1981. It is reprinted in this issue to meet requirements for publication on the Tuesday/Friday schedule assigned to the Department of Labor.

AGENCY: Occupational Safety and Health Administration, Labor.

ACTIONS: Denial of petitions and notice of variance applications and interim orders.

SUMMARY: OSHA hereby denies petitions by the primary and secondary lead smelting industries for one-year, industry-wide stays of the new trigger levels for medical removal protection (MRP) under the lead standard (29 CFR 1910.1025(k)). The new triggers thus will take effect for lead smelters on July 21, 1981. OSHA also hereby denies the lead battery manufacturers' petition for reconsideration of OSHA's earlier denial of its request for an industry-wide stay. These actions are taken because data submitted by industry were insufficient to justify granting industry-wide stays.

The data did, however, show serious and potentially serious problems of compliance with the new triggers in certain smelting and battery manufacturing plants. As a result, conditioned upon OSHA receiving by August 3, 1981, for each such plant a variance application, certification of notice to affected employees, and written acceptance of the requirements of the Order, the Agency is granting interim orders under section 6(b)(6)(A) of the OSHA Act to those lead smelting and battery manufacturing plants that have supplied data sufficient to establish the need for relief. The interim orders relieve those facilities from having to comply with the 60/40 removal return triggers, but obligate them to comply with the 70/50 triggers, all other provisions of the lead standard, and certain other requirements set out in the Interim Order. OSHA also invites other eligible lead smelting and battery manufacturing plants, including those that have submitted data but have not been granted an Interim Order via this notice, if they choose, to apply individually for temporary variances. Finally, OSHA requests every applicant to submit particular data needed by the Agency to determine whether to issue a temporary variance, and invites public comment on the variance requests.

DATES: The effective date of the new trigger levels (29 CFR 1910.1025(k) originally published on November 14, 1978 at 43 FR 53007) for primary and secondary smelters is July 21, 1981.

For all companies conditionally granted interim orders, variance applications, written acceptances and certifications must be received by August 3, 1981. All data requested herein by OSHA in support of each application for a temporary variance must be received by September 1, 1981. The last date for interested persons to submit comments on the variance applications is September 30, 1981. The last date for affected employers and employees to request a hearing on the applications is September 30, 1981.

ADDRESSES: Send applications, submissions, comments or requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3662, Third Street and Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Concannon, Director, Office of Variance Determination, at the above address, telephone: (202) 523–7144.

SUPPLEMENTARY INFORMATION:

A. Background

On March 3, 1981, OSHA published a notice in the **Federal Register** (46 FR 14897) delaying the effective date of the new removal and return trigger levels for medical removal protection (MRP) from March 1, 1981, as specified in the standard on occupational exposure to lead (29 CFR 1910.1025(k), November 14, 1978, 43 FR 53007) to April 1, 1981. That notice summarized the provisions of MRP and explained the need in the standard for progressively phased-in blood-lead levels triggering employee removal from, and subsequent return to, lead-exposed jobs. The notice also explained that the delay was granted as an interim measure in response to applications from certain employers and industry groups representing several lead industries for a one-year delay in the effective date of the new trigger levels. In the notice, interested persons were invited to submit information and views on all issues involved in the applications.

In support of their request for a stay of the 60 μg/100g removal and 40 μg/100g return triggers, the lead industries allege

that implementation of the new trigger levels is infeasible. Essentially, industry makes a four-pronged feasibility argument: (1) The 60/40 triggers will require for the first time the removal of many "supervisory" and "highly skilled" employees, whose blood-lead levels allegedly tend to fall in the 60–70 μg/100g range; (2) their removal will be prolonged beyond OSHA's original expectations in order for their blood leads to drop to the 40 μg/100g return level; (3) since these employees are highly paid, crucially positioned, and extremely difficult to replace, putting them on MRP not only will be costly but also can result in reduced production and a less safe and healthful workplace; and (4) the 60/40 triggers will require the removal of many production workers as well, thus adding to the cost of MRP. In combination, these factors assertedly will make implementation of the new triggers infeasible.

Since industry's allegations raised serious questions concerning the feasibility of the new trigger levels and what relief, if any, would be appropriate, the March 1, 1981, effective date of the new triggers was delayed for all lead industries until April 1, 1981, to enable the Agency to obtain and consider additional evidence.

To facilitate this process, OSHA in a letter dated March 5, 1981, specifically requested certain information from the lead industries. That request subsequently was included in a notice (46 FR 16974) further deferring the effective date to May 1, 1981, in which OSHA again invited all interested persons to submit information and views on any issues involved in the request for the one-year delay in the effective date of the new MRP trigger levels. The record was open until April 15, 1981, for the receipt of these submissions.

Comments opposing a delay of the effective date of the new trigger levels, mostly from unions, were received. The unions agreed generally on the following points: (1) That the original lead industry petition provided an inadequate factual and legal basis for either an industry-wide stay or a stay to individual plants; and (2) that temporary relief for individual plants which documented the infeasibility of applying the new trigger levels should be granted by means of the temporary variance procedure.

On May 1, 1981, for primary and secondary smelters only, OSHA again delayed the effective date of the new triggers. In granting that additional delay, OSHA explained that more time was needed to complete its analysis of the complex submissions of data by the lead smelters and to determine the appropriate relief. Since no significant evidence justifying relief had been presented to OSHA by companies or trade associations in the other lead industries, the Agency indicated that the new triggers would take effect with regard to those industries on May 15, 1981 (46 FR 24558). After this decision, OSHA received from the Battery Council International (BCI) a petition for reconsideration of OSHA's denial of an industry-wide stay for the battery industry, or, in the alternative, for temporary variances for named members of BCI, some of whom supplied supporting data.

The effective date applying the 60/40 triggers to primary and secondary lead smelters was further delayed by OSHA from June 1 to July 1, 1981, to allow the Agency more time to complete its efforts to fashion appropriate relief for the smelting industries while at the same time providing necessary protection to employees (46 FR 28845). Finally, to give the Agency time to prepare and publish the decision documents, that effective date was deferred to July 21, 1981 (46 FR 33516).

B. OSHA's Analysis of the Primary and Secondary Smelting Record

Submissions by the lead smelting industries include summary memoranda; raw data covering individual employee blood-lead levels, dates and lengths of MRP removals, and air-lead levels; information on respirator usage and in-plant environmental improvements; statistical analyses predicting the length of removal time needed to reduce blood leads from 60 to 40 μg/100g; and various recommendations. Analyzable data were submitted by all of the 8 primary smelters and by 8 of the approximately 55 secondary smelters.

OSHA's analysis of the evidence in the record yields the following general conclusions:

(1) Among primary smelters, the number of anticipated removals at the 60 trigger ranges from 2% to 12% of the total workforce. When subdivided into categories of "supervisory and skilled" and "unskilled" employees, the range among plants is from 2% to 15% for supervisory and skilled employees; and from 2% to 14% for unskilled.

(2) Among secondary lead smelters that submitted analyzable data, the number of anticipated removals at the 60 trigger ranges from 14% to 40% of the total workforce. When subdivided into categories of "supervisory and skilled" and "unskilled" employees, the range among plants is from 13% to 49% for supervisory and skilled; and from 6% to 37% for unskilled.

(3) Based upon MRP data submitted by primary smelters, OSHA estimated the length of medical removal time under the 60/40 triggers for removed workers to drop from a mean blood-lead level of 65 μg/100g to 40 μg/100g as follows: For 50% of removed workers to return is expected to take from 1.8 to 3.5 months; for 80% to return is expected to take from 3.1 to 7.3 months. These estimates, representing OSHA's best scientific judgment, admittedly are based upon extrapolations from data reflecting industry's experience with the 80/60 and 70/50 triggers, rather than upon data drawn from direct experience with blood-lead dynamics below 50 μg/100g. Industry disputes these estimates, claiming that for long-term workers with body burdens built up over many years the rate at which blood-leads drop slows dramatically below 50 μg/100g.

(4) The data in the record are too sparse either to substantiate or refute industry claims that substantial numbers of removable employees are, in practical terms, irreplaceable.

(5) The data in the record are too sparse to draw firm conclusions concerning the long-term economic impact of the costs attributable to the 60/40 triggers on either the primary or secondary smelting industry.

C. Conclusions Drawn by OSHA From the Primary and Secondary Smelting Record

Based upon its analysis, OSHA cannot conclude that the potential removal and return problems faced by individual primary and secondary smelters in complying with the 60/40 triggers constitute industry-wide infeasibility to comply with those triggers. Many smelters submitted no data; others submitted data insufficient to support a finding of industry-wide infeasibility. The petitions for industry-wide stays, therefore, are denied. Except as set forth below, the effective data of the new triggers for the primary and secondary smelting industries is July 21, 1981.

Feasibility problems do, however, appear to exist on a plant-by-plant basis in both industries. In the secondary lead smelting industry, for example, most facilities submitting data appear to have severe problems in coming into compliance with the new triggers. In some cases, such as Gopher Smelting and Refining Company, which will have to remove approximately 47% of its supervisory and skilled employees under the 60 trigger, numbers alone suggest the extreme dimensions of the problem. In other cases, a combination

of various factors may establish the need for relief.

Given that need, OSHA intends to use the temporary variance mechanism, set out in Section 6(b)(6)(A) of the OSHA Act and covered by regulations in 29 CFR Part 1905, to afford relief, if appropriate, on a plant-by-plant basis. For those plants that already have submitted data indicating feasibility problems, OSHA is granting interim orders under Section 6(b)(6)(A). The issuance of each Order is conditioned upon OSHA's receipt by August 3, 1981, of an application for a temporary variance, a certification of notice to affected employees, and a written acceptance of the requirements of the Interim Order for each such plant.

For those plants whose data submissions are inadequate, no interim relief is granted. Primary and secondary smelting plants that have not been granted interim relief at this time and those that have not yet submitted data may apply for a temporary variance and submit all required supporting data by September 1, 1981. Such applicants then will become eligible for an interim order, pending final disposition of each variance request.

D. OSHA's Analysis and Conclusions From Data Submitted by the Lead Battery Manufacturing Industry

Based upon analyzable data submitted by 17 of the 27 named members of the Battery Council International after the record had closed, OSHA's analysis yields the following general conclusions:

(1) Among battery manufacturing plants, the number of anticipated removals at the 60 trigger ranges from 1% to 65% of the total workforce, with broadly comparable ranges for supervisory and skilled employees and for unskilled employees.

(2) The evidence concerning the estimated length of removal time, irreplaceability of removable employees, and long-term economic impact of costs attributable to the 60/40 triggers on the lead battery manufacturing industry is virtually the same as the evidence presented by the lead smelting industries.

Based upon this analysis, OSHA cannot conclude that potential removal and return problems which individual battery manufacturing plants face in complying with the 60/40 triggers constitute industry-wide infeasibility to comply with those triggers. BCI's petition for a reconsideration of OSHA's denial of its earlier request for an industry-wide stay is therefore denied.

As indicated above, however, feasibility problems do appear to exist on a plant-by-plant basis within the lead battery industry. In Miami Battery & Electric, for example, 6 of 6 skilled workers will have to be removed under the 60 trigger. In such extreme cases, the numbers alone manifest the severity of the problem. In other cases, a combination of various factors may establish the need for relief. Given that need, OSHA intends to use the temporary variance mechanism to grant plant-by-plant relief within the battery industry in the same way and under the same conditions as in the primary and secondary lead smelting industries.

Notice of Application and Interim Order

In accordance with the requirements of 29 CFR 1905.14(b), OSHA hereby gives notice that: (1) The primary and secondary lead smelting and lead battery manufacturing companies listed below have applied for temporary variances from 29 CFR 1910.1025 (k)(1)(i)(C) and (1)(iii)(A)(3) of the lead standard; (2) their documented request for relief is based upon alleged inability to comply fully with the standard arising from the anticipated removal and consequent unavailability of certain employees under the 60/40 triggers for MRP; (3) the said companies are conditionally granted interim orders on a plant-by-plant basis, as authorized by 29 CFR 1905.10(c); (4) all interested persons are invited to submit before September 30, 1981, written data, views or arguments regarding any such application; and (5) affected employers, employees and appropriate State authorities having jurisdiction over the said plants are apprised of their right to request a hearing on an application by no later than September 30, 1981.

Interim Order

Interim orders are being issued to the following companies on an individual plant basis to enable each to prove its need for a temporary variance. The orders are issued conditioned upon OSHA's receipt by August 3, 1981, from each company of the following:

(1) Application for a temporary variance and interim order for a particular plant;

(2) Written acceptance of the conditions and requirements, enumerated below, of the Interim Order; and

(3) Certification that employees who would be affected by a variance have been notified of the application, by the employer's giving copies of it to their authorized employee representative and by the employer's posting copies at all places where notices to employees normally are posted, and also have been informed of their right to petition the Assistant Secretary for a hearing.

Primary Smelters

Bunker Hill—Idaho Plant
St. Joe, Missouri Plant
ASARCO, Glover Plant
ASARCO, East Helena Plant
ASARCO, Whiting Plant
ASARCO, Omaha Plant

Secondary Smelters

Gopher Smelting and Refining Co., Minnesota
Ross Metals, Inc.
Sanders Lead Company, Alabama
Tonolli Corp. Nesquehoning
Houston Lead Co., Texas
Chloride Metals—Tampa
Chloride Metals—Columbus
Chloride Metals—Florence

Battery Manufacturers

Mule Emergency Lighting, Inc., Cranston, RI
East Penn Manufacturing Co., Inc., Lyon Station, PA
Crown Battery Manufacturing Company, Frenost, OH
Miami Battery and Electric Corp., Miami, FL
New Castle Battery Co., New Castle, PA
Standard Industries, San Antonio, TX
Standard Storage Battery Co., St. Paul, MN
Surette Battery, Tilton, NH
Estee Battery Co., Commerce, CA
Meekan Battery Co., S. San Francisco, CA
Pico Battery Manufacturing Co., San Francisco, CA

Other Industries

Oxide and Chemical Corp., Indianapolis, INOxide and Chemical Corp., Memphis, IN
Associated Lead, Inc., Philadelphia, PA
Associated Lead, Inc., Brooklyn, NY

A. Summary and Rationale

In granting interim orders for certain plants and denying them for others, OSHA has decided to apply a rule of decision that it developed from its analysis of the record: Plants where 10 percent or more of the total lead-exposed supervisory and maintenance employees would have to be removed because of blood-leas, between 60–70 μg/100g are considered to merit relief and hence be entitled to an Interim Order. Plants where less than 10% would have to be removed are, at the present time, denied interim orders.

The 10% figure thus is treated as the rough boundary line of feasibility. Although no particular percentage can be proven to precisely demarcate the line between feasibility and infeasibility, record data and discussions with both industry and labor support the conclusion that the limits of feasibility are in the vicinity of 10%. The United Steelworkers of America, for example, in its Supplemental Memorandum suggests generally that "plants where the proportion of skilled/supervisory workers with blood leads

between 60–70 μg/100g is 10 percent or more merit relief through a one-year temporary variance * * *." Similarly, representatives of the secondary lead smelting industry stated that a plant can feasibly remove between 5% to 10% of its employees.

OSHA is using the 10% figure only as a rule of thumb to grant interim relief at this time. The percentage alone will not necessarily determined whether a temporary variance ultimately will be issued. Plants below the 10% figure may still show by compelling evidence that relief is needed. Conversely, even a plant with 10% or more of its supervisory/maintenance employees subject to removal because of the 60 trigger might fail to establish the need for a temporary variance.

Where granted, the Interim Order temporarily relieves the affected employer from compliance with the 60/40 triggers but requires the employer to continue to comply with the 70/50 triggers. The relief is conditioned upon the employer's ongoing compliance with all other provisions of the lead standard and all the conditions of the Order. The interim order will be in effect from the date of publication of this notice until a final decision is rendered by OSHA on the application for a temporary variance.

The primary purpose of the additional conditions contained in the interim order is to provide some protection for employees with elevated blood-lead levels between 60–70 μg/100. These employees, in the absence of the relief granted herein to employers, would have been protected from continued occupational exposure to lead by the requirement that they be removed until their blood-leads had dropped to 40 μg/100g. Because the Order temporarily denies employees that particular form of protection, OSHA, in fulfillment of its statutory obligation under Section (6)(b)(6)(A) of the OSHA Act, has designed a combination of other forms of protection to "safeguard * * * employees against the hazards covered by the standard * * *".

Generally, OSHA seeks by means of these conditions to enhance the level of protection afforded by other provisions of the lead standard pertaining to medical examinations and consultations, respirator usage, zinc protoporphyrin (ZPP) tests, and the like. OSHA bases its decision upon the extensive record on lead compiled in developing the lead standard, including the record compiled in conjunction with the MRP petitions.

Specifically, OSHA sets the following requirements in the interim order for the following reasons.

(1) The Order requires that employers perform blood-lead and ZPP tests bi-monthly on all employees with blood-leads over 40 μg/100g who are exposed to lead above the 30 μg/m³ action level. This requirement imposes no additional burden upon employers. Section 1910.1025(j)(2) of the lead standard presently requires such monitoring. OSHA includes it in this Order to remind employers that the requirement for ZPP tests no longer is judicially stayed.

(2) The Order requires that employers remove an employee with blood-leads over 70 μg/100g to areas where lead exposure is below 30 μg/m³, and return the employee when his/her blood-lead is at or below 50 μg/100g. Removal and return at 70/50 simply extends the second year triggers during the relief period. Requiring removal to places where exposures are below 30 μg/m³ affords some of the protection to removed employees that would be provided by the 60/40 triggers.

(3) The Order also requires that employers provide for a consultation every 2 months and a comprehensive medical examination every 6 months for employees with blood-leads between 60–70 who are exposed at or above the action level but are not being removed from exposure. Section 1910.1025(j)(3) requires medical examinations and consultations at least once a year for any employee whose blood sample tests during the preceding 12 months indicate blood-leads at or above 40 μg/100g. Since by this Order some employees with blood-lead levels in excess of 60 will be subjected to continuing exposure to air-lead levels above 30 μg/m³, more frequent medical examinations and consultations are required to monitor their health to prevent increased risk of material impairment. Based upon its expertise, the Agency has concluded that two medical examinations and four additional consultations with a doctor per year will provide reasonable and not unnecessarily burdensome safeguards.

(4) The Order further requires that the examining or consulting doctor make a written determination as to whether the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead. Section 1910.1025(k)(1)(ii) of the lead standard already requires removal of an employee from lead exposure at or above 30 μg/m³ on each occasion that a final medical determination indicates the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead. To maximize the preventive effect of the more frequent medical consultations and examinations required by this Order, OSHA is requiring written determinations after each such visit.

(5) The Order requires full-shift respirator usage for employees with blood-lead levels at or above 60 μg/100g who are working in areas with air-lead levels at or above 30μg/m³. Employees with such elevated blood-lead levels, who would be removed but for this Order, require increased protection from exposure to lead. Since engineering controls cannot generally be rapidly implemented, stricter requirements for the duration of respirator use is one means to increase employee protection.

(6) The Order requires that employers make special inspections and evaluations of employees with blood-lead levels at or over 60 who need not be removed under this Order, and to take short-term corrective steps to reduce employee lead absorption through work practices, respirator usage, use and availability of hygiene facilities and personal hygiene habits. Such small corrections can be made relatively easily with noticeable health benefit to affected employees.

(7) The Order requires that the employer agree to OSHA inspections related to its variance application. OSHA, in granting variance relief, must be assured that it can readily monitor compliance with these conditions of the relief.

(8) Finally, the Order requires that employers complete their temporary variance application (in original and six copies) and required data submissions by September 1, 1981, as a condition for the continuance of interim relief. The data the Agency requests is necessary for OSHA to make a final determination of whether individual plants need relief and to evaluate the compliance problems likely to occur during any period of interim and final relief.

B. The Order

Pursuant to the authority in Section (6)(b)(6)(A) of the Occupational Safety and Health Act of 1970, in the Secretary of Labor's Order No. 8–76 (41 FR 29059), and in 29 CFR Part 1905, it is ordered that all plants listed above are authorized to comply with the requirements of the Interim Order set forth below, in lieu of complying with the requirements of 29 CFR 1910.1025(k)(1)(i)(C) and 1910.1025(k)(1)(iii)(A)(3). All other provisions of the lead standard are unaffected by this Order and therefore must be complied with in conjunction with the terms of this Order.

The terms of the Interim Order are as follows:

(1) As presently required by 29 CFR 1910.1025(j)(2) of the lead standard, employers shall perform blood-lead and zinc protoporphyrin (ZPP) tests every two months on each employee whose last blood test indicated a blood-lead level at or above 40 μg/100g and who is exposed to lead above the action level of 30 μg/m³.

(2) Employers shall remove and return all employees with blood-lead levels at or above 70 μg/100g in accordance with the provisions of Sections 1910.1025(k)(1)(i)(B) and 1910.1025(k)(1)(iii)(A)(2) of the lead standard, except that removal shall be to areas where lead exposure is below 30 μg/m³.

(3) For employees with blood-lead levels between 60–70 μg/100g, who work in jobs having airborne lead exposure at or above 30 μg/m³, the employer shall provide:

(a) A personal consultation with a licensed physician every two months; and

(b) A comprehensive medical examination by a licensed physician every six months.

(4) After both the personal consultation and the comprehensive medical examination, the physician shall make a written determination as to whether the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead. If the employee is determined to have such a condition, he or she shall be removed from work having an exposure to lead at or above 30 μg/m³.

(5) For employees with blood-lead levels at or above 60 μg/100g who are working in areas with air-lead levels at or above 30 μg/m³, respirator usage shall be mandatory during the entire workshift.

(6) For all employees with blood-lead levels at or above 60 uμg/100g who need not be removed under the terms of this Order, the employer shall make an immediate inspection and evaluation of:

(a) The lead-related work practices affecting the employee;

(b) The employee's respirator usage; and

(c) The use and availability of hygiene facilities, and the employee's relevant personal hygiene habits.

Based on that inspection and evaluation, the employer shall take all reasonable and appropriate corrective steps in these regards to reduce the employee's absorption of lead.

(7) The employer shall agree to allow OSHA to inspect its premises in connection with this variance application and this Interim Order.

(8) Employers who herein have been granted interim orders, and employers who may in the future apply for similar orders and temporary variances, shall, by September 1, 1981, submit the data requested below. A failure to provide the required data by that date will result in the automatic expiration of the interim order or the denial of a request for such an order.

C. Data Request

To permit speedy determination by OSHA, the following data must be submitted in the form and sequence set out below for each plant:

(a) Blood-lead, air-lead, and, if available, ZPP data for the past 12 months for each employee exposed to lead above the 30 μg/m³ action level. Employee identification may be coded, but job classification must be stated.

(b) The name and address of the laboratory performing the blood analyses.

(c) A copy of the safety and health program presently administered and enforced by the employer at the plant. This program shall include, but not be limited to, descriptions of: (i) Engineering and administrative controls; (ii) work practices; (iii) personal protective clothing; (iv) hygiene measures; (v) housekeeping measures; (vi) training and education; and (vii) medical surveillance program.

(d) A statement of when the applicant expects to be able to comply with the 60/40 triggers and of what additional steps it has taken and will take to come into compliance with those triggers by March 1, 1982. The statement shall include an initial list of engineering controls that may be necessary and an outline of the written compliance program for engineering controls required by 29 CFR 1910.1025(e)(3), including the projected dates for the development and implementation of such controls.

(e) A copy of the existing written respirator program, which shall include details on respirator cleaning and maintenance and employee comfort and acceptance, as required by § 1910.1025(f) of the lead standard.

(f) A statement as to whether any citations, pending or in the process of abatement, for lead-related violations of Federal or State standards have been issued to the employer. Identify the citation(s) and provide a copy of any abatement plan(s).

(g) A specific analysis of any adverse safety and health consequences of removing supervisory and maintenance employees who have blood-lead levels between 60–70 μg/100g.

(h) The following information regarding supervisory and/or maintenance employees whose removal the employer claims is infeasible:

(i) The number, location(s), and job classification(s) of such removable employees;

(ii) The total number, location(s) and job classification(s) of all employees in the particular work area, operation or process referred to in the employer's answer to (i), above;

(iii) The extent to which the employees to be removed are replaceable and a concrete description of the problems (e.g., training time, costs, etc.) anticipated in replacing them;

(iv) The specific reasons why any of the employees to be removed are irreplaceable;

(v) The number of positions available for transferring employees who would be removed; and

(vi) Alternate proposals that have been considered for production planning and shift changes to reduce and eliminate potential lead exposures.

(i) Regarding production workers whose removal the employer claims is infeasible, the same information requested in paragraphs (g) and (h) above.

The above-listed companies shall give notice of this grant of Interim Order to employees affected thereby by the same means required to be used to inform them of the applications for variance. This Interim Order shall become effective on July 21, 1981.

The Assistant Secretary may revoke this Order at any time if the applicant does not comply with any requirement of the Order or the relevant standards, or if other information indicates that revocation of the Interim Order is warranted. Unless revoked, the Interim Order will remain in effect until a decision is made on the application for variance.

Signed at Washington, D.C., this 20th day of July 1981.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 81-21706 Filed 7-21-81; 3:55 am]

BILLING CODE 4510-26-M

DEPARTMENT OF EDUCATION

Office of Billingual Education and Minority Languages Affairs

34 CFR Part 520

Billingual Education: Desegregation Support Program

Correction

In FR Doc. 81-21258 appearing at page 37594, in the issue of Tuesday, July 21, 1981, make the following change:

On page 37594, in the first column under the heading "EFFECTIVE DATE": change the date now reading "September 4, 1981." to read "45 days after publication in the **Federal Register**."

BILLING CODE 1505-01-M

34 CFR Part 777

Library Research and Demonstration Program (Title II-B HEA)

Correction

In FR Doc. 81-21133, appearing at page 37484 in the issue of Monday, July 20, 1981, the date and the parentheses surrounding it should be removed from the fifth line of the "EFFECTIVE DATE" paragraph in column one.

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 5976

[(Nev-051731) (A-13384)]

Nevada and Arizona; Revocation of Executive Order No. 5339

Correction

In FR Doc. 81-20070, appearing in the issue of Thursday, July 9, 1981, at page 35505, make the following changes:

On page 35505, in the third column, the 31st line, change the word now reading "and" to read "to".

On page 35506, in the second column, the 31st line, change "18" to "8".

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 46, No. 142
Friday, July 24, 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

Animal and Plant Health Inspection Service

9 CFR Part 92

Importation of Certain Animals; Harry S Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to reduce the quarantine period for animals entering the United States through the Harry S Truman Animal Import Center (HSTAIC) from five months to three months. The Department has found that the necessary tests can be performed and the results of such tests returned within ninety days. The intended effect is to avoid an unnecessarily extended and more expensive period of quarantine.

DATES: Comments must be received on or before August 24, 1981.

ADDRESS: Written comments to Deputy Administrator, USDA, APHIS, VS, Room 870, Federal Building, Hyattsville, MD 20782, 301–436–8170.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, USDA, APHIS, VS, Room 821, Federal Building, Hyattsville, MD 20782, 301–436–8530.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed in conformance with Executive Order 12291, and has been determined to be not a "major rule." The Department has determined that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and should have no adverse effects on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Dr. Harry C. Mussman, 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. This is because this action will affect only persons who receive permits to import cattle through HSTAIC. There have been a total of 30 entities which have been granted permits to import cattle through HSTAIC during the three years since it has opened. This figure compares with hundreds of other importers which import cattle into this country annually. Also, the reduction of the quarantine period will reduce costs of importation for any importer bringing in animals through HSTAIC.

Dr. Milton J. Tillery, Director, National Program Planning Staffs, has determined that an emergency situation exists which warrants less than a 60-day comment period on this proposed action because the normal practice in Europe is to vaccinate the new calf crop in the fall of each year and such vaccinations make it impossible to adequately test the animals for communicable disease. If the importation of cattle from Europe is to take place this year, it must be done before the vaccinations occur. Therefore, in order to have this proposed change, it promulgated, in effect for the next importation, only a 30-day comment period is being provided.

It should be noted that, in this issue of the **Federal Register**, the Department has published a notice of the deadline date for the receipt of applicants for special authorization to be drawn in a lottery basis for the allotment of quarantine space for the next group of cattle to be imported through the HSTAIC. This notice also establishes that Europe is the geographic area from which cattle will be considered for importation and the schedule of fees, if this proposed change is adopted, for importation of such cattle.

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that, pursuant to Section 1 of the Act of May 6, 1970 (21 U.S.C. 135), the Animal and Plant Health Inspection Service is considering amending Part 92, Title 9, code of Federal Regulations.

The purpose of HSTAIC is to provide a means to import animals that would not otherwise be eligible for importation into the united States and thereby broaden the genetic base of livestock in the United States. Current regulations provide for a five month period of quarantine with extensive laboratory tests and treatment, if necessary.

This proposal would amend § 92.41(b)(3)(iii) and (v) to change the references to the five month period of quarantine to a three month period of quarantine. The Department's experience with the two pervious quarantines indicates that the present five month quarantine period for animals from countries affected with exotic diseases not otherwise eligible for importation into the United States is not necessary. The Department has found that all the tests can be performed and results of such tests returned within ninety days. Therefore, the quarantine period for such animals at HSTAIC would be reduced from five months to three months.

Present § 92.41(c) sets forth the cooperative agreement which importers are required to execute. Paragraph A.1.b. of the cooperative agreement authorizes the cooperator to execute a payment bond which will be in effect from the date of issuance of the import permit to the date the animals are released from quarantine or otherwise disposed of. This present section estimates this time to be not less than eight months. Since this proposal would, if adopted, reduce the quarantine period at HSTAIC by two months, the estimation in paragraph A.1.b. is also reduced by two months, from eight months to six months.

This proposal also would correct a typographical error in § 92.41(b)(7).

Accordingly, Part 92, Title 9, Code of Federal Regulations would be amended in the following respects:

1. In § 92.41(b)(3) (iii) and (v), the reference to "the five month period of quarantine" would be amended to read: "the three month period of quarantine."

2. Section 92.41(b)(7) would be amended to read: "Fees shall be based on the expected level of occupancy of the HSTAIC as determined by the number of animals that importers have been specially authorized to import into the HSTAIC."

3. In § 92.41(c), the number "8" in the fourth sentence of A.1.b. of the Cooperative Agreement, would be changed to "6".

All written submissions made pursuant to this rule will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 819, Hyattsville, Maryland, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the **Federal Register.**

Done at Washington, D.C., this 20th day of July 1981.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 81-21697 Filed 7-23-81; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 19, 20, 21, 30, 40, 51, 61, 70, 73 and 170

Licensing Requirements for Land Disposal of Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed Rule.

SUMMARY: This notice invites public comment on proposed amendments to the Commission's rules to provide specific requirements for licensing the land disposal of radioactive wastes. The proposed amendments set forth performance objectives for disposal, general requirements for land disposal of radioactive waste, technical requirements for disposal of radioactive waste into near-surface disposal facilities, requirements for submitting applications for licenses authorizing such activities and procedures which the Commission will follow in the issuance of such licenses. The rule does not deal with disposal by individual licensees by burial of their own wastes. The proposed amendments also set forth provisions for consultation and participation in license reviews by State governments and Indian tribes. Further amendments are proposed governing the transfer of licensed material for disposal. The proposed requirements respond to the needs and requests of the public, Congress, industry, the states, the Commission, and other Federal agencies for codification of regulations for the dispoal of low-level radioactive waste.

DATE: Comment period expires October 22, 1981. Comments received after October 22, 1981 will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESS: All interested persons who desire to submit written comments in connection with the proposed amendments should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Docketing and Service Branch. Copies of comments received on the proposed amendments may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: R. Dale Smith, Chief, Low-Level Waste Licensing Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 427-4433.

SUPPLEMENTARY INFORMATION:

I. Description of the Proposed Action

The U.S. Nuclear Regulatory Commission proposes to add to its rules in 10 CFR a new Part 61 to provide licensing procedures, performance objectives, and technical criteria for licensing facilities for the land disposal of radioactive waste. Specifically, the regulations would establish performance objectives for land disposal of waste; technical requirements for the siting, design, operations, and closure activities for a near surface disposal facility; technical requirements concerning the waste form that waste generators must meet for the land disposal of waste; classification of waste; institutional requirements; and administrative and procedural requirements for licensing a disposal facility. Amendments to other parts of 10 CFR are proposed to govern the certification and use of shipping manifests to track waste shipments and clarify, but not substantially modify, the requirements of existing regulations. Specific requirements for licensing facilities for the disposal of radioactive wastes by alternative land disposal methods will be proposed for Part 61 in subsequent rulemakings. Disposal of radioactive wastes by an individual licensee will continue to be governed by 10 CFR Part 20.

Part 61 defines which wastes are acceptable for disposal by near-surface disposal methods (and which wastes are not acceptable and must be disposed of by other methods). It also sets out the administrative and procedural requirements for licensing a facility for the land disposal of waste.

II. Need for the Proposed Action

Current general regulations for licensing materials do not contain any technical standards or criteria for the disposal of licensed materials. However, the need for comprehensive, national standards and technical criteria for the disposal of radioactive waste is well documented. The Commission has undertaken a program to establish such standards and criteria through this proposed rulemaking action.

III. Background

The Commission has had a program underway for several years to develop regulations and other guidance for the management and disposal of low-level waste (LLW). On October 25, 1978, the Commission published an Advance Notice of Proposed Rulemaking (43 FR 49811) regarding the development of specific regulations for the disposal of LLW. The development of these regulations was in response to needs and requests expressed by the public, the Congress, industry, the States, the Commission, and other Federal agencies for codification of regulations for the disposal of LLW. To provide guidance and support for developing the new regulation, 10 CFR Part 61, the Commission has prepared a draft environmental impact statement (EIS) NUREG-0782.[1] The statement is not a generic EIS on the disposal of LLW. Rather, it is a decision document that has been prepared to provide a basis for decisions on the performance objectives and technical and financial criteria set out in Part 61. As part of the process to scope the form and content of the EIS and the proposed regulation, the advance notice asked for advice, recommendations, and comments on the scope and content of the EIS and the regulation. As a part of this advance notice, the Commission announced its intention to:

- Develop technical criteria and standards for the disposal of LLW by shallow land burial and alternative disposal methods.
- Prepare a supporting EIS for the regulation.
- Coordinate development of technical criteria and standards for shallow land burial and alternative disposal methods with requirements for the classification of waste (Define the concentrations and quantities of waste acceptable for disposal by various disposal methods).

[1] Single copies of this report will be available free upon publication to the extent of supply and may be obtained by written request to the Director, Division of Technical Information and Document Control, Washington, D.C. 20555. Copies will also be made available for inspection or copying for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, D.C.

The Commission received a total of 36 responses from the public on the advance notice. These comments have been docketed (Docket No. PR–61) and may be examined in the Commission's Public Document Room located at 1717 H Street NW., Washington, D.C. A detailed analysis by the Commission of the public responses received may also be examined in the Public Document Room. The respondents to the advance notice strongly supported the Commission's development of specific criteria and standards for the disposal of low-level waste. There was also support among the commenters that an overall EIS should be prepared to provide an essential part of the informational and decisional base for the development of the criteria and standards for the rulemaking action. However, the commenters were divided on the form and structure of the criteria and standards. Some commenters stated that the criteria and standards should be minimal and basic and should emphasize the performance objectives to be met by low-level waste disposal facilities. Others suggested the criteria and standards should be specific and detailed. Many commenters also stated that as part of the development of LLW disposal standards and criteria a system was needed for classifying or segregating the waste based on hazard.

A number of comments were received on the Commission's questions regarding alternative disposal methods to shallow land burial. Although the comments in this area were mixed, the most often expressed opinion was that primary consideration should be given to developing requirements for shallow land burial and emplacement of waste into mined cavities. Disposal of wastes in ocean waters was given the lowest priority. Four commenters felt there was no need to establish a priority list of the alternative disposal methods to shallow land burial. The most often expressed disadvantage of any alternative method was the potential for increased cost. Approximately 60 percent of the respondents suggested other potentially viable methods for low-level waste treatment and/or disposal. The methods most frequently mentioned were volume reduction and other advanced processing techniques.

The comments received by the Commission on the advance notice were used by the Commission in scoping the form and content of the EIS and the regulation. For this scoping process, the Commission also considered a numbr of other sources, including:

- The results of program studies and other technical data on LLW management and disposal;
- Licensing experience with current LLW disposal sites and current LLW management techniques;
- Programs by the Environmental Protection Agency (EPA) to develop criteria and standards for LLW management and regulations for disposal of nonradio-active solid and chemically hazardous wastes;
- Recommendations of the Interagency Review Group on Nuclear Waste Management;
- Natural Resources Defense Council (NRDC) Petition for Rulemaking (PRM 20–7);
- Discussions with industry and public interest groups, State and Federal agencies, and others;
- Recommendations from the State Planning Council; and
- Public Law 96–573, "Low-Level Radioactive Waste Policy Act."

On February 28, 1980, the Commission also published a Notice of Availability of a preliminary draft regulation, dated November 5, 1979, announcing availability of the draft for public review and comment to help ensure wide distribution and early public review and comment (45 FR 13104). Copies of this draft regulation were distributed to all of the States. The comments received in response have been docketed (Docket No. PR–61) and may be examined in the Commission's Public Document Room located at 1717 H Street NW., Washington, D.C.

During the summer and fall of 1980, the Commission also sponsored 4 regional workshops to provide an opportunity for open dialogue among representatives of the States, public interest groups, the industry, and others on the issues to be addressed through the Part 61 rulemaking. One workshop was conducted by the Southern States Energy Board for the southeast region, a second by the Western States Energy Board for the west, a third by the Midwestern Regional Office of the Council of State Governments for the central region and midwest, and a fourth by the New England Regional Commission for the northeast. These workshops were particularly useful in formulating our positions on the more judgmental aspects of the rule and underlying assumptions (such as the length of time we should assume that active governmental controls could reasonably be relied on). A copy of the full transcript for each meeting and a summary report documenting the collective views of the participants has been placed in the docket for this rulemaking (Docket No PR–61) and may be examined at the Commission's Public Document Room located at 1717 H Street NW., Washington, D.C.

IV. Purpose and Scope of Part 61

It is the purpose of Part 61 to establish technical criteria and procedures for licensing facilities for the land disposal of radioactive wastes. Part 61 will not apply to alternative disposal methods such as deep space or ocean disposal. It is not practicable to develop one regulation dealing with such a wide variety in disposal technologies. Requirements for ocean disposal are a responsibility of the EPA. Space disposal, although technically feasible, is not developed to the point of routine, economic application.

The recently enacted Low-Level Radioactive Waste Policy Act (Pub. L. 96–573) sets forth a traditional definition of "low-level radioactive waste," i.e., radioactive waste not classified either as high-level radioactive waste, transuranic waste, spent nuclear fuel, or uranium mill tailings (byproduct material as defined in section 11 e.(2) of the Atomic Energy Act of 1954). While Part 61 is intended to deal with the disposal of most wastes included in this definition, the waste classification scheme that forms the basis for Part 61 has identified some "low level radioactive wastes" that are not suitable for disposal by the means that Part 61 provides, and alternative methods will have to be used. Therefore, the term "low-level radioactive waste" is not used in Part 61. Reference is made to "waste" and "radioactive wastes" which, within the context of Part 61, refers to those wastes that are acceptable for disposal under the provisions of Part 61.

This proposed regulation includes overall performance objectives expected in any type of land disposal and technical requirements for the disposal of waste near the surface. The technical requirements for disposal are set forth for disposal site characteristics, disposal site design and near-surface disposal facility operations, classification and characteristics of wastes, and institutional control and surveillance.

V. Summary of Rule

The following sections provide a discussion of the major provisions of Part 61.

A. Performance Objectives Versus Prescriptive Requirements

In developing Part 61, the Commission has considered two basic approaches: a performance objective approach and a

prescriptive approach. A regulation oriented toward performance objectives would establish the overall objectives to be achieved in waste disposal and would leave flexibility as to how the objectives would be achieved.

In the latter approach, specific detailed requirements for design and operation of a land disposal facility would be set out in the regulations. Prescriptive standards would specify the particular practices, designs, or methods to be employed—for example, the thichness of the cover material (the cap) over a land disposal trench, or the maximum slope of the trench walls.

Setting of prescriptive standards requires a considerable amount of detailed knowledge about potential designs, techniques, and procedures for disposing of wastes in order to prescribe which designs, techniques, and procedures are among the best and would assume that the state of art in waste disposal is developed to the point where there are clear choices to be made among all the potential approaches.

A combination of approaches has been chosen for Part 61. Overall performance objectives are stated and the applicant has flexibility in choosing design features and operating practices to achieve these objectives. There are some prescriptive requirements that have been judged necessary in light of past operating experience with disposal facilities. To the extent practicable, these requirements are stated as minimum criteria to afford some flexibility in meeting them.

B. Development of Performance Objectives

With respect to the performance objectives, the Commission's overall goal is to assure protection of the public health and safety. In considering radioactive waste disposal, attainment of this goal would appear to fall into two time frames: the short-term operational phase and the long term after operations cease.

In the short term, the concern is for protection of workers and the general population during operation of a disposal facility.

Protection of the public health and safety over the long term is most important and long-term performance of the land disposal facility after operations cease should be given greater emphasis than short-term considerations and conveniences. It is therefore at the time of the land disposal facility closure that greatest reliance will be placed on the disposal site characteristics and design as well as the waste characteristics to assure protection of the public health and safety without the need for continued active care and maintenance.

Assuring safety over the long term involves three considerations: (1) protection of individuals from inadvertent intrusion into the site and coming in contact with the waste at some point in the future; (2) protection of the general public from potential releases to the environment; and (3) stability of the disposed waste and the site to eliminate the need for ongoing maintenance of the site following closure.

Safety During Operations. The short-term performance objective included in Subpart C of Part 61 will be to assure that the disposal facility will be operated in conformance with the same Commission standards for radiation protection set out in 10 CFR Part 20 that are applied to all Commission licensees for protection of workers (See § 61.43.)

Protection of the Inadvertent Intruder. The Commission believes that intentional intrusion into the land disposal facility (e.g., an archaeologist reclaiming artifacts) cannot reasonably be protected against. However, after the land disposal facility closes, and after active institutional control and surveillance over the disposal site have been removed, one or a few individuals could inadvertently disturb waste in the disposal site through activities such as construction of a house or by farming.

Actual intrusion into the waste may never occur; but, for purposes of Part 61, it has been assumed that intrusion could occur, in which case the one or few such individuals should not receive an unacceptable radiation exposure. The Commission is applying a 500 mrem/yr maximum individual exposure limit for this unusual case. This limit is based on ICRP recommendations for dose limits to individuals and is a level that is recognized as providing adequate protection. Since only one, or at most a few, persons would be involved, it is not necessary to consider a population dose. This limit is then used to determine the allowable concentrations of nuclides in each class of waste. (See § 61.42.)

Protection of the Environment. The primary long-term pathway of release of radioactivity from near-surface disposal involves radionuclide contamination of and transport through the ground water. Presently there exists no specific numerical standard for protection of the ground water. The Environmental Protection Agency (EPA), under its generally applicable environmental standards-setting authority, has responsibility to prepare a standard that will set limits for releases of radioactivity to the general environment from disposal facilities. After examining other existing standards, the Commission does not anticipate that the standard will be much higher than the standards already established for releases to the environment from fuel cycle facilities set out in 40 CFR Part 190 (25 mrem/yr whole-body exposure). Also, the standard will probably not be any lower than the limits established in 40 CFR Part 141 for concentrations of radioactivity in drinking water (4 mrem/yr whole body exposure). As a part of the EIS for Part 61, the Commission analyzed a range of limits from 1 mrem/yr to 25 mrem/yr applied at various locations at and in the vicinity of a disposal facility. Based on the numerical limits already set for existing standards and this analysis, the Commission has selected an objective that requires that any movement of radioactivity not result in calculated doses exceeding 25 mrem/yr to an individual at the site boundary or cause the EPA Drinking Water Standards (40 CFR Part 141) to be exceeded at the nearest public drinking water supply (See § 61.41). When EPA standards are effective, licensees will have to comply with them. Because these standards are specific to land disposal of radioactive waste, they are included in Part 61 rather than 10 CFR Part 20.

C. Minimum Technical Requirements

To help assure that the performance objective will be met, minimum requirements will be placed on the various parts of an overall disposal "system".

The principal parts of an overall disposal system that are readily identifiable and will be addressed in the minimum technical requirements are:

- The characteristics of the disposal site into which the waste is placed;
- The method by which the disposal site is designed, the land disposal facility constructed, the waste emplaced, and the disposal site closed;
- The characteristics of the waste; and
- The degree and length of institutional control, surveillance, and monitoring of the disposal site after closure.

Disposal Site Suitability Requirements. A wide range of locations are potentially available for use as a near-surface disposal facility ranging from the humid east to the arid west. The approach the Commission has followed in establishing the disposal site suitability requirements has been to establish a common-sense base of disposal site evaluation factors that can be consistently applied throughout the country. The requirements would essentially eliminate certain limited

areas from consideration because of undesirable characteristics but would leave large areas in each region where acceptable sites could be found (see § 61.50). The requirements are intended to eliminate, to the extent practicable, those areas with certain characteristics that are known to lead to or have high potential to lead to problems over the long term (e.g., flooding or rapid erosion of the site). These disposal site characteristics include:

(1) Complexity—The disposal site must be capable of being investigated and analyzed. If the disposal site cannot be characterized, prediction of potential long-term impacts is not possible.

(2) Potential Land and Resource Use—The disposal site should not have any extensive natural resources beneath it or have such high potential for other subsequent uses of the land that immediate intrusion into the disposal site after active institutional controls are removed is likely.

(3) Surface Water—Areas with large surface water sources or high potential for flooding should be avoided to reduce the greater potential for migration that large quantities of water present.

(4) Ground water—Ground water intrusion into the disposal units should be avoided to reduce the potential for leaching of waste and subsequent migration.

(5) Stability—Stability of the disposal site over the long term is important in helping assure continued site integrity and in reducing the potential for migration and transport of waste to offsite areas.

Disposal Site Design, Land Disposal Facility Operation, and Disposal Site Closure Requirements. The specific requirements for design, operation, and closure of a near-surface disposal facility are directed at achieving long-term stability of the disposed waste and the disposal site so that, after closure, the need for ongoing active maintenance is eliminated and only minor custodial care, surveillance, and monitoring are required. (See § 61.51.) Other requirements are directed at enhancing natural disposal site characteristics by directing surface water away from disposal units, reducing infiltration of precipitation into disposal units, and reducing the potential for erosion, leading to an acceptable condition for disposal site closure.

Specific design requirements are set out relating to assuring protection of an inadvertent intruder from exposure to higher concentration wastes. Such wastes, defined by § 61.55, must be disposed of at greater depths (i.e., a minimum 5 meters below grade) or with equivalent natural or engineering barriers to reduce radiation exposure and further minimize the potential that an individual might inadvertently come in contact with the waste. In addition, a specific provision requires segregation of the lower activity compressible waste from the higher activity wastes and separate disposal. Higher activity wastes are subject to the structural stability requirements of § 61.55(b). Requirements are also established on environmental monitoring (§ 61.53).

Waste Characteristics and Classification. A cornerstone of the system to control the migration of radionuclides offsite is stability—stability of the waste and of the disposal site so that once emplaced and covered, the access of water to the waste can be eliminated or minimized. Thus, a basic requirement on waste is that it should be stable, that is, it should maintain its configuration and consistency under the conditions if would be exposed to after disposal. This stability should last long enough for the radioisotopes to decay to levels where they are no longer of concern from the migration standpoint.

While stability is a necessary characteristic for waste that has a potential for migration, studies have shown that much of the waste being disposed of does not contain sufficient amounts of radionuclides to be of concern from the migration standpoint. However, these same wastes, such as ordinary trash-type wastes tend to be unstable. It is obvious that if these wastes were disposed of with higher activity waste, their deterioration could lead to failure of the system and permit water to penetrate the disposal site and cause problems with the higher activity wastes. The choice, then, is either to require these less hazardous wastes to meet stability requirements or to segregate them from the more hazardous waste. Since stability requirements for low activity wastes would probably require expensive processing, segregation appears to have a cost/benefit advantage in spite of possible increased costs of disposal site stabilization.

A simple waste classification scheme has been devised and incorporated into Part 61. The scheme is based on the role that the waste plays in the assurance that the performance objectives of protecting persons from radiation from waste will be met.

The first categorization of waste is to identify those wastes that do not have to meet the stability requirements and that will be segregated at the disposal site. These wastes, called Class A segregated wastes, are defined in § 61.55 in terms of the maximum allowable concentration of certain isotopes and certain minimum requirements on waste form that are necessary for safe handling. The second category is for waste that requires stability, Class B stable waste, and is defined in terms of allowable concentrations of isotopes and requirements for a stable waste form as well as the minimum handling requirements.

There are concentrations of certain isotopes that will require protection against inadvertent intrusion after institutional controls have lapsed. These concentrations have been determined by analysis of the exposure to humans from the postulated intrusion of an individual after the 100 year period of institutional control. Any waste with concentrations of these isotopes that would cause an exposure greater than 500 millirem must be protected from intrusion by deeper burial or some other barrier. Wastes requiring such protection are identified as Class C intruder wastes.

The waste classification section also places upper limits on concentrations of isotopes in any class of waste. Wastes containing higher concentrations are generally excluded from near-surface disposal. Part 61 provides for special consideration by the Commission of proposed disposal methods on a case-by-case basis for wastes that exceed these values.

For most of the alpha emitting transuranic nuclides, the maximum allowable concentrations were calculated to be in the range of 10 nanocuries per gram currently imposed by disposal facilities. These calculations were conservatively based, in that they did not allow credit for dilution by other wastes. If this factor were changed, the values would increase somewhat. A decision was made not to recalculate in order to come up with higher values. This decision is based on two factors. First, in the spirit of the ALARA (as Low as Reasonably Achievable) concept, the lower value of 10 nCi/g has been demonstrated as an achievable concentration to control the disposal of transuranic nuclides. This value has been imposed by the Department of Energy for some eleven years and by most of the commercial disposal site operators for nearly that long. The last commercial site imposed the 10 nCi/g restriction in 1981. Thus, there is no need to increase the limit from the standpoint of achievability. Second, there is a tendency toward a more conservative assessment of the hazard of certain transuranic nuclides (Ref. ICRP 30) and it does not seem prudent at this time to use the higher calculated values. A value of 350 nCi/g was established for plutonium=241, since

this concentration of short lived beta-emitting isotope decays to a 10 nCi/g concentration of americium=241, a longer lived alpha-emitter. At present, wastes containing transuranic nuclides in concentrations greater than 10 nCi/g are not being generaged in significant volumes.

Based on the values in Table I, and the isotopic content of various waste streams analyzed in the Environmental Impact Statement, the following waste streams would generally fall into the waste classes indicated.

Class A—Segregated Waste

PWR Ion Exchange Resin (low activity)
PWR Concentrated Liquids (low activity)
PWR Filter Sludges (low activity)
PWR Filter Cartridges (low activity)
PWR Compactible Contaminated Trash
BWR Compactible Contaminated Trash
Fuel Fabrication Compactible Trash
Fuel Fabrication Noncompactible Trash
Institutional Trash
Industrial Sealed Source Manufacturing Contaminated Trash
Industrial Low Activity Trash
Fuel Fabrication Process Waste
UF_6 Process Waste
Nuclear Medicine Waste
Biomedical Research Radiotracer Waste, Biowastes, and Contaminated Trash
Academic Institution Radioactive Radiotracer Wastes, Biowastes, and Contaminated Trash

Class B—Stable Waste

PWR Ion Exchange Resins
PWR Concentrated Liquid
PWR Filter Sludges
PWR Filter Cartridges
BWR Ion Exchange Resins
BWR Concentrated Liquids
BWR Filter Sludges
PWR Noncompactible Trash
BWR Noncompactible Trash
LWR [2] Nonfuel Reactor Components
LWR [2] Decontamination Resins
Tritium Production and Processing Waste Accelerator Targets
High Specific Activity Industrial Waste

Class C—Intruder Waste

Waste [2] from Isotope Production Facilities
Sealed [2] Sources

Note.—More recent data indicate that power reactor operation and waste processing characteristics are tending to move LWR wastes into higher classes.

The Commission has not developed a classification of waste based on total hazard. The classification is based on radiation protection considerations.

The Commission, however, has addressed other potential hazards presented by other associated components of waste (e.g., chemical and biological hazards) through te exclusion or treatment of certain chemical, physical and biological forms of waste.

The Commission recognizes the need for a "de minimis" classification of wastes, wastes that would be exempt from Part 61 and would be considered of no regulatory concern. The Commission believes, however, as the Federal Radiation Policy Council has recommended, that such exemptions should be determined on a specific waste basis. In this regard, a recent rulemaking (46 FR 16230) established such an exemption in a new § 20.306 for certain levels of tritium and carbon-14 contained in liquid scintillation and animal carcass waste. Other wastes may also readily lend themselves to treatment in this manner. The Commission will be working over the next 2 years to define these wastes and provide for additional exemptions as appropriate. Thus, Part 61 will not establish a generic "de minimis" category for waste.

D. Land Ownership of Near-Surface Disposal Facilities

Federal or State government ownership of land for disposal of waste at a land disposal facility has been a requirement in the Commission's regulations (10 CFR 20.302) since the inception of commercial disposal operations. This requirement is being continued to assure adequate control of the disposal site after closure and to reduce the potential for inadvertent intrusion. (See § 61.59.)

Although ownership by a State or the Federal Government is required before the Commission will issue a license, the Commission will consider an application when the site is privately owned if the applicant provides evidence that arrangements have been made with a State or the Federal government to assume ownership before the license is issued. The details of the arrangement may include whatever provisions the State or Federal agency considers appropriate as long as they are not inconsistent with requirements of the Commission.

E. Institutional Control

Control of access to the disposal site and use of the land following closure of the site is required to keep people from having contact with the waste and affecting the integrity of the disposal site. Active institutional controls involving periodic surveillance by the custodial agency and controlled access (e.g., maintaining a fence) cannot be relied upon indefinitely (§ 61.60 will not allow reliance on active institutional controls for more than 100 years since this is judged to be maximum time that governmental institutions should be relied on to carry out active controls.)

A monitoring program to check on continued disposal site integrity would also be carried out. Control and surveillance of the disposal site by the State or Federal land owner/custodial agency is needed to prevent an intruder from excavating, drilling wells, or performing other activities that would expose that individual or lead to possible increased migration offsite. Active controls would eventually be removed and replaced by more passive controls (e.g., government land ownership and records) which will be an inexpensive means of ensuring that knowledge of the disposal facility will be retained.

F. Financial Assurances

Given the past history at some of the existing disposal sites, one of the key concerns is assurance of adequate financial qualification on the part of the applicant to construct and operate the disposal facility and to provide adequate financial provisions for disposal site closure and postoperational activities.

Subpart E requires that the applicant be financially qualified to conduct all licensed activities during the construction and operational phases of the land disposal facility. Proof of the financial qualifications of applicants is not currently required by Parts 30 and 40. This new requirement will help assure that resources are not expended on projects without adequate backing. This requirement should minimize the potential for early default or the abandonment of the site by the operator.

Section 61.62 of the Part 61 requires the applicant to provide an acceptable form of financial surety to ensure that funds are available to perform closure and stabilization and observation until the license is transferred to the custodial agency for institutional control or terminated. The Commission has received evidence of a great deal of public interest concerning the issue of financial responsibility for closure of a disposal site. Numerous written comments were made on this portion of the draft regulation, and the issue was also raised at all four workshops held to review this regulation. Many commenters felt that the licensee should be held responsible for the full costs of closure of a disposal site and that the license should not be terminated and the land returned to the custodial government authority until the licensee has completed satisfactory closure.

The amount of surety liability required is based on cost estimates

[2] These waste streams may contain concentrations of certain isotopes that will require special assessment and Commission approval for near-surface disposal.

submitted by the licensee in an approved plan for disposal site closure and stabilization. The applicant must submit a cost estimate for disposal site closure that includes consideration of inflation, increases in the amount of disturbed land, and the closure and stabilization activities that have already occurred at the disposal site. The Commission expects that the closure costs will be minimal when compared to the other life cycle costs of the disposal site because the regulation requires the licensee to perform the majority of closure and stabilization activities as an integral part of normal disposal site procedures during the operating period.

The types of surety arrangements being considered in Part 61 are similar to the Commission's recently enacted uranium mill tailings requirements (45 FR 65521). In their evaluation of various surety mechanisms, the Commission used the following criteria: (1) degree of security in obtaining funds in case the licensee defaults; (2) amount of administrative time and expense required to implement and monitor the surety; (3) problems of asset valuation posed by the mechanism; and (4) the cost of the surety mechanism. Based on this review, the Commission found the following types of surety mechanisms to be acceptable: surety bonds, cash deposits, trust funds, deposits of government securities, escrows, letters or lines of credit, and a combination of these mechanisms or such other types of arrangements as may be approved by the Commission. The Commission found that self-insurance for a private sector applicant was not an acceptable surety mechanism.

Section 61.63 requires the applicant to provide evidence to the Commission that a legally binding arrangement, such as a lease, exists between the applicant and the party holding title to the disposal site. Such a binding arrangement would delineate financial responsibility for the active institutional control period, which is not expected to exceed 100 years. The Commission feels that this regulatory approach is required so that all necessary activities following licensing transfer, such as surveillance, monitoring, and custodial activities, will be performed promptly and in a manner that will protect the public health and safety.

Currently the Commission lacks authority to require land disposal facility licensees to provide financial responsibility for activities occurring after the original licensee's responsibilities have ceased and the license has been transferred to another party. The Commission is considering legislation proposals that would give the Commission the authority to require financial assurances of land disposal facility licensees for the active institutional control period. In the meantime, the Commission feels that the most appropriate regulatory approach is to require an applicant to submit evidence of a binding arrangement.

Manifest Tracking System. Section 20.311 of Part 20 establishes the requirements for a manifest tracking system for wastes. The system will address the need for more complete information on the classification and characteristics of the waste, for improved accountability of wastes, and for a better data base. The EPA has recently instituted a manifest tracking system for hazardous wastes. The General Accounting Office (GAO) noted the need for improvements in these two areas in its report entitled "The Problem of Disposing of Nuclear Low-Level Waste: Where Do We Go from Here?", published March 31, 1980. The GAO recommended that the Commission "Determine who the generators of low-level are in both the Agreement and non-Agreement States and how much waste each licensee is generating" and "Establish a method to track waste from the point of generation to the point of disposal." Improving the data base on waste will improve the credibility of decisionmakers, enable better planning for inspections and emergencies, enhance projection of future waste generation, and help in site specific analyses and planning. The information on waste classification and characteristics is necessary for proper handling and disposal at the land disposal facility (e.g., which waste requires intruder barriers).

Licensees who ship under existing regulations are required to prepare and forward shipping manifests that comply with DOT regulations. The proposed manifest content requirements in § 20.311 are somewhat more comprehensive but compatible with DOT requirements. The waste generator must be specifically identified. The information requirements concerning the waste itself are somewhat more extensive and geared to information needed for disposal, not just transportation and handling. More explicit information on chemical content and composition and solidification agents is required. Licensees are required to comply with and certify compliance with waste form requirements of Part 61. This latter requirement stems solely from the technical requirements for disposal and is therefore new. The land disposal facility licensee must record data on the condition of the waste itself and document and certify receipt, handling, repackaging, storage, and disposal.

The use of the manifests as provided in § 20.311 provides a tracking system that is inspectable. Section 20.311 requires the shipper to provide copies of the manifest to precede and accompany shipments and investigation if notification of receipt or disposal is not received. The responsibility for tracking shipments is with the shipper who may be the generator, a service company who collects, stores, and delivers the waste, or an intermediate processor. A crosscheck is provided to ensure that delayed or missing shipments are investigated by requiring land disposal facility operators to periodically match advance copies of manifests to those for shipments actually received.

G. Life Cycle of a Typical Land Disposal Facility

The life of a typical facility can be broken into 5 phases: preoperational, operational, closure, postclosure observation, and institutional control. The following discussion considers each phase separately. The applicant's activities and procedural requirements as established by this proposed rulemaking are included.

Preoperational Phase. The preoperational phase consists of two parts: disposal site selection and characterization and licensing. The disposal site selection and characterization fall into the data gathering and planning phase. This is the phase in which the applicant selects a region of interest and searches for a number of possible disposal sites (a slate of candidate disposal sites), using reconnaissance-level information. The applicant then narrows the possible disposal sites down to one. After a proposed disposal site has been selected, based upon reconnaissance-level information, the applicant begins a detailed investigation (geology, depth to ground-water table, amount of rainfall, etc.) of the proposed disposal site. The applicant also initiates the preoperational monitoring program.

The applicant prepares an application for the land disposal facility following Subpart B. The applicant also prepares an environmental report. Of particular importance to this application are the performance objectives and technical requirements discussed earlier and the preliminary site closure plan, arrangements concerning land ownership and associated responsibilities, and financial assurance.

Licensing activities begin when the applicant files the application. The application is reviewed for completeness and acceptability in accordance with new Paragraph 2.101(b)(2), prior to docketing. Notice of receipt of the tendered application is to be published in the **Federal Register**. The Commission notifies state, local and tribal officials and begins to coordinate with these officials. Once docketed, the application is again noticed in the **Federal Register** and the application and environmental report widely distributed. An opportunity for interested parties to request a hearing is provided pursuant to 10 CFR 2.105. Application fees are paid in accordance with 10 CFR Part 170.

The regulatory review period follows. The applicant continues any disposal site studies and the preoperational observation and monitoring. The applicant also responds to informtional requests. Section 61.3 requires that construction not begin until a decision is made to issue the license. The application and environmental report are updated if necessary.

The Commission reviews the application and the accompanying environmental report. The Commission requests additional information if necessary. The Commission prepares a draft environmental impact statement (DEIS). If hearings are requested, an Atomic Safety and Licensing Board (ASLB) is appointed. After the Commission's review is completed and documented and the EIS and any hearings completed, and the Commissioners have approved, the Director issues the license or denies the application in accordance with the criteria in § 61.23 and any decision rendered by the Licensing or Appeals Board. Hearings, if any, would be held in accordance with existing rules in 10 CFR Part 2. An Atomic Safety and Licensing Appeal Board and/or the Commission may review the findings of the ASLB or the ASLB findings may be appealed to these next levels and to the courts. Upon resolution of the hearings, reviews, and appeals, and the Commissioners have approved, the Director takes final action to issue or deny and publishes a notice in the **Federal Register**. If the ownership of the land has not been transferred to the State or Federal government, transfer would now take place. If the license is issued, it is subject to the general license condition in § 61.24 and to specific conditions as required.

If no hearings have been requested, and the Commissioners approve, the Commission publishes a notice of the issuance in the **Federal Register** in accordance with § 2.106, and the Director takes final action to issue or deny the license.

State and Indian tribes may participate in the Commission's license review process to aid the Commission in its review. Subpart F of the proposed Part 61 addresses such participation, which is in addition to participation as already provided in Parts 2 and 51.

Examples of the forms that State and Tribal participation may take include:

(1) Development of technical data, including, but not limited to, socioeconomic, hydrological, geological, environmental, or land use data for incorporation into the Commission's environmental impact statement on the application or other analyses.

(2) Development of public participation mechanisms to be included in the licensing process.

(3) Provision of a technical data base to provide verification to the Commission for materials presented in the license application.

(4) Exchange of State and Commission staff for cooperative review.

Operational Phase. After issuance of a license by the Commission the land disposal facility is constructed and waste receipt and disposal operations start. At intervals specified in the license, (the normal term for materials licenses is currently 5 years) the licensee would be required to submit a license renewal application (§ 61.27). At this time, the disposal site closure plan and funding requirements would be updated and financial arrangements for assurance of adequate funding reviewed. A public hearing would be offered. The licensee may also apply for amendments to the license (§ 61.26).

Disposal Site Closure Phase. As the disposal site becomes filled, time for disposal site closure approaches. Prior to closure, the licensee would submit a final closure plan for review and approval (§ 61.28). A public hearing would be offered. Upon approval, the licensee implements the plan. This would consist of decontamination and dismantlement, as appropriate, of buildings. Final disposal site contouring and preparation is performed. The licensee should work toward closure during the entire operational phase so that disposal site closure would not involve a major task.

Postclosure Observation and Maintenance. Implementation of the closure plan would be followed by a period of postclosure observation and maintenance on the part of the licensee, in which the licensee's monitoring and maintenance programs would continue (§ 61.29). This period is expected to last about 5 years to help assure that the disposal site is in a stable condition so that only minor custodial care, surveillance, and monitoring by the custodial agency are required. When the disposal site has reached a stable condition, the licensee may prepare and submit an application for transfer of the license. A public hearing would be offered. Among other things, the licensee must provide reasonable assurance that the site meets all performance objectives under Subpart C, and the Commission must find that the State or Federal agency responsible for postclosure care of the site is prepared to assume these responsibilities. As a condition for assuming these responsibilities, a State may require the licensee to comply with requirements of its own, as long as State's requirements are not inconsistent with the requirements of the Commission. Upon a satisfactory finding, the license will be transferred to the Federal or State custodial agency to cover their activities during the active institutional control period (§ 61.30).

Institutional Control Board. During the institutional control period, which for purposes of Part 61, the Commission assumes to be not more than 100 years, the custodial agency carries out a program of monitoring to assure continued satisfactory site performance and physical surveillance to keep people off the site and carries out minor custodial activities at the site. As a part of the license termination, the licensee is required to place records of the disposal facility with local, State, and Federal agencies. These records along with restrictions on the property deed and trench markers should help minimize disturbance of the disposal site. These latter mechanisms are those that would continue after the institutional control period. At the end of the necessary institutional control period, the license may be terminated (§ 61.31).

H. Other Considerations

Application to Existing Sites. Many of the operational provisions and waste characteristics requirements proposed in this rulemaking are in effect at the existing disposal facilities. Although nearly all disposal at existing facilities is carried out under State licenses, it would be the Commission's intent that in the future all disposal would be expected to comply with the provisions of Part 61. Existing disposal facilities should have no difficulty in complying with the waste classification and characteristics, manifest requirements, and the minimum requirements dealing with design and operations,

environmental monitoring, closure, post-closure observation, and institutional control. Where existing operating sites have difficulty meeting any of the criteria, the Commission will consider the matter on a case by case basis.

Naturally Occurring and Accelerator-Produced Radionuclides in Waste. Although the Commission has no direct statutory authority over naturally occurring and accelerator-produced radionuclides the evaluation of any specific disposal site will include consideration of the total impacts from all waste disposed of at the disposal site, including byproduct, source, special nuclear material, and naturally occurring and accelerator-produced material. Specific concentration limits for the disposal of important naturally occurring and accelerator-produced nuclides will be included in the planned regulatory guide on the classification of waste.

Paperwork Reduction Act. As required by Pub. L. 96–511, this proposed rule will be submitted to the Office of Management and Budget for clearance of the reporting/recordkeeping/application requirements.

Regulatory Flexibility Act. Based upon the information available at this stage of this rulemaking proceeding and in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rulemaking will not, if promulgated, have a significant economic impact upon a substantial number of small entities.

The Regulatory Flexibility Act (Public Law 96–345) was signed into law in September 1980. The Act's principal objective is to make certain that Federal agencies try, where possible, to fit regulatory requirements to the scale of the affected activity. Significant economic impacts on a substantial number of small entities is a major concern. The proposed Part 61 and accompanying rule changes will potentially impact a significant number of persons licensed by the Commission and the Agreement States. The following discussion addresses the analyses required by the Act and briefly describes the impacts and how the interests of the small entities were considered in developing this proposed rule. The draft EIS for Part 61 provides additional background information and analysis of the impacts of this rulemaking action.

The need for standards to govern the disposal of radioactive wastes and new regulations to implement these standards is discussed in detail in the draft EIS.

Some provisions of the proposed rulemaking will apply to all Commission licensees who transfer radioactive waste for disposal on land. The Commission has approximately 9,000 licensees. All but a few hundred are small entities. Types of small entities that may be impacted include physicians, hospitals, medical and clinical laboratories, colleges and universities, waste collection companies, small industrial operations, and waste disposal site operators. Exact numbers of impacted entities are not available. Based on a 1979 survey of Commission licensees, less than one quarter of the licensees should be affected on a regular basis.

The reporting, recordkeeping, and other requirements with which licensees must comply in the proposed rule impose only a minor incremental burden and will result in better accountability of wastes and improvements in disposal of wastes. The reporting requirements are directed primarily at disposal site operators. Currently only two firms hold this type of license. In the foreseeable future it is not anticipated that the number of this type of licensee will reach ten. The requirements are comparable to existing requirements or requirements that would be imposed in specific licenses for site operation. All licensees transferring waste would be required to investigate and file reports if shipments are lost. (See proposed § 20.311 of 10 CFR Part 20.) Existing regulations have similar but more specific reporting requirements for lost radioactive materials. All licensees transferring waste are also required to prepare complete shipping manifests. The user and radiation safety personnel currently preparing wastes for shipment will have to spend some additional time preparing manifests and tracking shipments. Licensees are already required to keep records of transfers and certain disposals.

Compliance with the waste classification and characteristics requirements is required of all licensees who transfer waste for land disposal. The need for and impacts of compliance with waste criteria are addressed in the draft EIS. The types of impacts that the rule changes may have include additional waste treatment and processing, use of containers to meet waste form requirements, new labels for packages, and higher disposal costs in some cases to cover, for example, the addition of intruder barriers when required. Based on the analysis in the Draft EIS, it appears that very few small entities generate radioactive waste that would be subject to these requirements.

Federal rules that overlap the proposed rule are primarily those of the Department of Transportation (DOT). The Commission is not aware of any rules that duplicate or conflict with the proposed rule except that reports to the Environment Protection Agency on effluent releases and broker activities required by "Superfund" registration may be duplicative. The Commission would particularly welcome comments on how to minimize duplication with "Superfund" requirements. The Commission and DOT have an established working relationship implemented through a formal Memorandum of Understanding. The rule itself acknowledges the need to comply with DOT rules, and the Commission currently inspects licensees for compliance with DOT requirements. The manifest required by this rulemaking is consistent with DOT requirements, and the same document will be used to meet requirements of both agencies. The waste form and packaging requirements are in addition to and compatible with DOT rules.

The Regulatory Flexibility Act also requires discussion of alternatives to the proposed rule. The recordkeeping and reporting requirements impose such a minor incremental burden that no relief or exemption was considered. They are, in fact, minor modifications of existing rules and practices. Further, since the small entities account for a significant percentage of the volume of waste generated, it is important that all licensees participate in the manifest tracking system. The waste classification and characteristics portion of the rule does provide some relief from compliance for waste produced by the small entities. Where radiological hazard permits, segregated disposal has been provided as an option to complying with more restrictive waste acceptance requirements. The rule is a combination of performance and prescriptive requirements, as discussed earlier. Exemption from coverage is feasible when the radiological hazard of the wastes permits. The exemption of less hazardous wastes on a specific waste basis by separate rulemaking efforts was discussed previously. (See de minimis discussion in Section V.C.)

The economic costs of the rule to small entities have not been quantified. The incremental burdens are judged small and have been addressed qualitatively in this summary and in the EIS. The rulemaking should not affect economic factors such as employment, business viability, or ability for affected entities to compete.

The requirements in waste disposal practices are judged to significantly outweigh the small economic impact on

small entities. However, the Commission is seeking comments and suggested modifications because of the widely differing conditions under which small entities operate.

Any small entity subject to this regulation who determines that because of its size, it is likely to bear disproportionate adverse economic impact should apprise the Commission in a comment that indicates:

(1) The size of their business and how the proposed regulations would result in a significant economic burden upon them as compareed to larger organizations in the same business community;

(2) How the proposed regulations could be modified to take into account their differing needs or capabilities;

(3) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the commenter; and

(4) How the proposed regulations, as modified, would still adequately protect the public health and safety.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of a new 10 CFR Part 61 and the following amendments to 10 CFR Parts 2, 19, 20, 21, 30, 40, 51, 70, 73 and 170 is contemplated.

A new Part 61 is added to 10 CFR to read as follows:

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

Subpart A—General Provisions

Sec.

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61.2 Definitions.
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Subpart B—Licenses

61.10 Content of application.
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61.24 Conditions of licenses.
61.25 Changes.
61.26 Amendment of license.
61.27 Application for renewal or closure.
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Subpart C—Performance Objectives

61.40 General requirement.
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Subpart D—Technical Requirements for Disposal Facilities

61.50 Disposal site suitability requirements for land disposal.
61.51 Disposal site design for land disposal.
61.52 Land disposal facility operation and disposal site closure.
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61.55 Waste classification.
61.56 Waste characteristics.
61.57 Labeling.
61.58 Alternative requirements for waste classification and characteristics.
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Subpart E—Financial Assurances

61.61 Applicant qualifications and assurances.
61.62 Funding for disposal site closure and stabilization.
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Subpart F—Participation by State Governments and Indian Tribes

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61.71 State and Tribal government consultation.
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Subpart G—Records, Reports, Tests, and Inspections

61.80 Maintenance of records, reports and transfers.
61.81 Tests at land disposal facilities.
61.82 Commission inspections of land disposal facilities.
61.83 Violations.

Authority. Secs. 53, 57d, 62, 63, 65, 81, 161b., i., o., 182, 183, Pub. L.83-703, as amended, 68 Stat., 930, 932, 933, 935, 948, 950, 953, 954, as amended (42 U.S.C., 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); Secs. 202, 206, Pub. L. 93-438, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); Sec. 14, Pub. L. 95-601 (42 U.S.C. 2021a). For the purposes of Sec. 223, 68 Stat. 958, as amended, 42 U.S.C. 2273, Table 5, §§ 61.55, 61.56 issued under Sec. 161b, 68 Stat. 948; §§ 61.3, 61.10 through 61.17, 61.24, 61.61 through 61.63, and 61.80 issued under Sec. 161o., 68 Stat. 950, as amended (42 U.S.C. 2201).

Subpart A—General Provisions

§ 61.1 Purpose and scope.

(a) The regulations in this part establish, for land disposal of radioactive waste, the procedures and criteria for the issuance, and terms and conditions upon which the Commission issues licenses, for the disposal for others of radioactive wastes containing byproduct, source and special nuclear material. Disposal of waste by an individual licensee is set forth in Part 20 of this chapter.

(b) Except as provided in § 61.6 "Exemptions" and in Part 150 of this chapter, the regulations in this part apply to all persons in the United States. The regulations in this part do not apply to the disposal of high-level waste as provided for in Part 60 of this chapter or byproduct material (as defined in § 40.4(a-1)) as provided for in Part 40 of this chapter and licensed material as provided for in Part 20.

§ 61.2 Definitions.

As used in this part:

"Active maintenance" means any significant remedial activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in §§ 61.41 and 61.42 are met. Such active maintenance includes ongoing activities such as the pumping and treatment of water from a disposal unit or one-time measures such as replacement of a disposal unit cover. Active maintenance does not include custodial activities such as repair of fencing, repair or replacement of monitoring equipment, revegatation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep such as mowing grass.

"Buffer zone" is a portion of the disposal site that is controlled by the licensee and that lies between the disposal units and the boundary of the site.

"Chelating agent" means a chemical compound which can be attached to a metal ion by at least two bonds in such a way as to form a ring structure. It is used to sequester metal ions that might be undesirable in a particular environment.

"Commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a land disposal facility. The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.

"Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

"Director" means the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission.

"Disposal" means the isolation of radioactive wastes from the biosphere by emplacement in a land disposal facility.

"Engineered barrier" means a man-made structure or device that is intended to protect an intruder from inadvertent exposure to radiation from certain wastes.

"Disposal site" means that portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone.

"Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal the unit is usually a trench.

"Government agency" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the government.

"Inadvertent intruder" means a person who might occupy the disposal site unknowingly after closure and engage in normal activities, such as agriculture, dwelling construction, and other pursuits in which the person might be exposed unknowingly to radiation from the waste.

"Indian Tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act (25 USC 450).

"Intruder barrier" means a sufficient depth of cover over the waste that inhibits contact with waste and helps to assure that radiation exposures to an inadvertent intruder will meet the performance objectives set forth in this part, or engineered structures that provide equivalent protection to the inadvertent intruder.

"Hydrogeologic unit" means any soil or rock unit or zone which by virtue of its porosity or permeability, or lack thereof, has a distinct influence on the storage or movement of groundwater.

"Land disposal facility" means the land, buildings, and equipment which is intended to be used for the disposal of radioactive wastes into the subsurface of the land. For purposes of this chapter, a geologic repository as defined in Part 60 is not considered a land disposal facility.

"License" means a license issued under the regulations in Parts 30 through 35, 40, 50, 61, or 70 of this chapter, including licenses to operate a production or utilization facility pursuant to Part 50 of this chapter.

"Licensee" means the holder of such a license.

"Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

"Near-surface disposal facility" means land disposal facility in which radioactive waste is disposed of in or within the upper 15-20 meters of the earth's surface.

"Person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, (except that the Department of Energy is considered a person within the meaning of the regulations in this part to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission pursuant to section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244)), any State or any political subdivision of or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

"Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care and that assure that the disposal site remain stable and will not need ongoing active maintenance.

"State" means any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia.

"Surveillance" means observation of the disposal site for purposes of visual detection of need for maintenance, custodial care, evidence of intrusion, and compliance with other license and regulatory requirements.

"Tribal Governing Body" means a Tribal organization as defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450).

"Waste", for purposes of this part, means those low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-Level Waste Policy Act, that is radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in section 11e.(2) of the Atomic Energy Act.

§ 61.3 License required.

(a) No person may receive, possess, and dispose of radioactive waste containing source, special nuclear, or byproduct material at a land disposal facility unless authorized by a license issued by the Commission pursuant to this part.

(b) Each person shall file an application with the Commission and obtain a license as provided in this part before commencing construction of a land disposal facility. Failure to comply with this requirement may be grounds for denial of a license.

§ 61.4 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be addressed to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Communications reports, and applications may be delivered in person at the Commission's offices at 1717 H Street NW., Washington, D.C. or 7915 Eastern Avenue, Silver Spring, Maryland.

§ 61.5 Interpretations.

Except as specifically authorized by the Commission, in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be considered binding upon the Commission.

§ 61.6 Exemptions.

The Commission may, upon application by an interested person, or upon its own initiative, grant any exemption from the requirements of the regulations in this part as it determines is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest.

§ 61.7 Concepts.

(a) *The Disposal facility.* (1) Part 61 is intended to apply to *land disposal* of radioactive waste and not to other methods such as sea or extraterrestrial disposal. In its present form, Part 61 contains procedural requirements and performance objectives applicable to any method of land disposal. It contains specific technical requirements for *near-*

surface disposal of radioactive waste which involves disposal in the uppermost 15 to 20 meters of the earth. Technical requirements for alternative methods will be added in the future.

(2) Near-surface disposal of radioactive waste takes place at a *near-surface disposal facility*, which includes all of the land and buildings necessary to carry out the disposal. The *disposal site* is that portion of the facility which is used for disposal of waste and consists of *disposal units* and a *buffer zone*. A *disposal unit* is a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the disposal unit is usually a trench. A *buffer zone* is a portion of the disposal site that is controlled by the licensee and that lies between the boundary of the disposal site and any disposal unit. It provides controlled space to establish *monitoring* locations which are intended to provide an early warning of radionuclide movement, and to take mitigative measures if needed.

(b) *Waste Classification and Near-Surface Disposal.* (1) Disposal of radioactive waste in near-surface disposal facilities has two primary safety objectives: *prevention of migration* of radionuclides, primarily through *groundwater*; and prevention of exposure to *inadvertent intruders*.

(2) A cornerstone of the system to control the migration of radionuclides offsite is *stability*—stability of the waste and the disposal site so that once emplaced and covered, the access of water to the waste can be eliminated or minimized. While stability is a necessary characteristic for waste that has a potential for migration, much radioactive waste does not contain sufficient amounts of radionuclides to be of concern from this standpoint; this waste, however, tends to be unstable, such as ordinary trash type wastes. If mixed with the higher activity waste, their deterioration could lead to failure of the system and permit water to penetrate the disposal unit and cause problems with the higher activity waste. Therefore, in order to avoid placing requirements for a stable waste form on relatively innocuous waste, these wastes have been classed as *Class A segregated* waste. Even though the Class A segregated waste is unstable, it decays to acceptable levels during the period when the site is occupied and active maintenance can control water infiltration. Those higher activity wastes that should be stable for proper disposal are classed as *Class B stable* waste. The Class A segregated waste will be disposed of in separate disposal units at the disposal site. For certain isotopes, a maximum disposal site inventory will be established based on the characteristics of the disposal site.

(3) It is possible but unlikely that persons might occupy the site in the future and engage in normal pursuits without knowing that they were receiving radiation exposure. These persons are referred to as *inadvertent intruders*. Protection of such intruders can involve two principal controls: *institutional control* over the site after operations by the site owner to assure that no such occupation or improper use of the site occurs; or, designating which waste would present an unacceptable risk to an intruder, and disposing of this waste in a manner that provides some form of *intruder barrier* that is intended to prevent contact with the waste. This regulation incorporates both types of protective controls.

(4) Institutional control is relied on for periods up to *100 years* to control access to the closed site. This permits the disposal of Class A segregated and Class B stable waste without special provisions for intrusion protection, since these classes of waste contain types and quantities of radioisotopes that will decay during the 100-year period to levels that do not pose a danger to public health and safety.

(5) Waste that will not decay to such levels within 100 years is designated as *Class C intruder* waste. This waste is disposed of at a greater depth than the other classes of waste so that subsequent surface activities by an intruder will not disturb the waste. Where site conditions prevent deeper disposal, *engineered barriers* such as concrete covers may be used. The assumed effective life of these intruder barriers is 500 years. A *maximum concentration* of radionuclides is specified for all wastes so that at the end of the 500 year period, remaining radioactivity is at a level that does not pose a danger to public health and safety. Waste with concentrations above these limits is generally unacceptable for near-surface disposal. Some provisions are made for exceptions on a case-by-case basis. Class C intruder waste must also be stable, since stability contributes to intruder protection by providing a recognizable and nondispersible waste form.

(c) *The Licensing Process.* (1) During the *preoperational phase*, the potential applicant goes through a process of *disposal site selection* by selecting a region of interest and examining a number of possible disposal sites and narrowing the choice to the *proposed* site. Through a detailed investigation of the *disposal site characteristics* the potential applicant obtains data on which to base an analysis of the disposal site's suitability. Along with these data and analyses, the applicant submits other more general information to the Commission in the form of an *application* for a license for land disposal. The Commission's review of the application is in accordance with established administrative procedures and may involve *participation* by affected *State governments* or *Indian tribes*. While the proposed disposal site must be owned by a State or the Federal government before the Commission will issue a license, it may be privately owned during the preoperational phase if suitable arrangements have been made with a State or the Federal government to take ownership in fee of the land before the license is issued.

(2) During the *operational phase*, the licensee carries out disposal activities in accordance with the requirements of this regulation and any conditions on the license. Periodically, the authority to conduct the above surface operations and receive waste will be subject to a *license renewal*, at which time the operating history will be reviewed and a decision made to permit or deny continued operation. When disposal operations are to cease, the licensee applies for an amendment to his license to permit *site closure*. After final review of the licensee's *site closure and stabilization plan*, the Commission may approve the final activities necessary to prepare the disposal site for the period of institutional control, without the need for ongoing *active maintenance* of the site.

(3) During the period when the site closure and stabilization activities are being carried out, the licensee is in a *disposal site closure* phase. Following that, for a period of at least 5 years, the licensee must remain at the disposal site for a period of *postclosure observation and maintenance* to assure that the disposal site is stable and ready for institutional control. At the end of this period, the licensee applies for a *license transfer* to the disposal site owner.

(4) After a finding of satisfactory disposal site closure, the Commission will transfer the license to the State or Federal agency that owns the disposal site. If the Department of Energy is the Federal agency the license will be terminated. Under the conditions of the transferred license, the owner will carry out a program of *monitoring* to assure continued satisfactory disposal site performance, physical *surveillance* to restrict access to the site and carry out minor *custodial activities*. At the end of

the prescribed period of institutional control, the license will be terminated by the Commission.

Subpart B—Licenses

§ 61.10 Content of application.

(a) An application to receive from others, possess, use and dispose of wastes containing or contaminated with source, byproduct or special nuclear material by land burial must consist of general information, specific technical information, institutional information, and financial information as set forth in §§ 61.11 through 61.16. An environmental report prepared in accordance with Part 51 of this chapter must accompany the application.

§ 61.11 General information.

The general information must include each of the following:

(a) Identity of the applicant including:

(1) The full name, address, telephone number and description of the business or occupation of the applicant;

(2) If the applicant is a partnership, the name, and address of each partner and the principal location where the partnership does business;

(3) If the applicant is a corporation or an unincorporated association, (i) the state where it is incorporated or organized and the principal location where it does business, and (ii) the names and addresses of its directors and principal officers; and

(4) If the applicant is acting as an agent or representative of another person in filing the application, all information required under this paragraph must be supplied with respect to the other person.

(b) Qualifications of the applicant:

(1) The organizational structure of the applicant, both offsite and onsite, including a description of lines of authority and assignments of responsibilities, whether in the form of administrative directives, contract provisions, or otherwise;

(2) The technical qualifications, including training and experience, of the applicant and members of the applicant's staff to engage in the proposed activities and minimum training and experience requirements for personnel filling key positions described in § 61.11(b)(1).

(3) A description of the applicant's personnel training program; and

(4) The plan to maintain an adequate complement of trained personnel to carry out waste receipt, handling, and disposal operations, in a safe manner.

(c) A description of:

(1) The location of the proposed disposal site;

(2) The general character of the proposed activities;

(3) The types and quantities of radioactive waste to be received, possessed, and disposed of;

(4) Plans for use of the land disposal facility for purposes other than disposal of radioactive wastes; and

(5) The proposed facilities and equipment.

(d) Proposed schedules for construction, receipt of waste, and first emplacement of waste at the proposed land disposal facility.

§ 61.12 Specific technical information.

The specific technical information must include the following information needed for demonstration that the performance objectives of Subpart C of this part and the applicable technical requirements of Subpart D of this part will be met:

(a) A description of the natural disposal site characteristics as determined by disposal site selection and characterization activities. The description must include geologic, technical hydrologic, meteorologic, climatologic, and biotic features of the disposal site and vicinity.

(b) A description of the design features of the land disposal facility and the disposal units. For near-surface disposal, the description must include those design features related to infiltration of water; integrity of covers for disposal units; structural stability of backfill, wastes, and covers; contact of wastes with standing water; disposal site drainage; disposal site closure and stabilization; elimination of long-term disposal site maintenance; inadvertent intrusion; occupational exposures; and disposal site monitoring.

(c) A description of the principal design criteria and their relationship to the performance objectives.

(d) A description of the design basis natural events or phenomena and their relationship to the principal design criteria.

(e) A description of codes and standards which the applicant has applied to the design and which will apply to construction of the land disposal facilities.

(f) A description of the construction and operation of the land disposal facility. The description must include the methods of construction; waste emplacement; the procedures for and areas of waste segregation; types of intruder barriers; onsite traffic and drainage systems; survey control program; methods and areas of waste storage; and methods to control surface water and groundwater access to the wastes.

(g) A description of the disposal site closure plan, including those design features which are intended to facilitate disposal site closure and to eliminate the need for ongoing active maintenance.

(h) An identification of the natural resources at the disposal site, the exploitation of which could result in inadvertent intrusion into the low-level wastes after removal of active institutional control.

(i) A description of the kind, amount, classification and specifications of the radioactive material proposed to be received, possessed, and disposed of at the land disposal facility.

(j) A description of the quality assurance program for the determination of natural disposal site characteristics and for quality assurance during the design, construction, and operation of the land disposal facility and the receipt, handling, and emplacement of waste. Audits and managerial controls must be included.

(k) A description of the radiation safety program for control and monitoring radioactive effluents and occupational radiation exposure to demonstrate compliance with the requirements of Part 20 of this chapter and to control contamination of personnel, vehicles, equipment, buildings, and the disposal site. Both routine operations and accidents must be addressed. The program description must include procedures, instrumentation, facilities, and equipment.

(l) A description of the environmental monitoring program to provide data to evaluate potential health and environmental impacts and the plan for taking corrective measures if migration of radionuclides is indicated.

(m) A description of the administrative procedures that the applicant will apply to control activities at the land disposal facility.

§ 61.13 Technical analyses.

The specific technical information must also include the following analyses needed to demonstrate that the performance objectives of Subpart C of this part will be met:

(a) Pathways analyzed in demonstrating protection of the general population from releases of radioactivity including air, soil, groundwater, surface water, plant uptake, and exhumation by burrowing animals. For near-surface disposal, the groundwater pathway will generally be the most significant in terms of releases of radioactivity. The migration analyses must clearly identify and differentiate between the roles

performed by the natural disposal site characteristics and design features in isolating and segregating the wastes. The analyses must clearly demonstrate that there is reasonable assurance that the exposures to humans from the migration of radioactivity will not exceed the limits set forth in § 61.41.

(b) Analyses of the protection of individuals from inadvertent intrusion must include demonstration that the waste classification and segregation requirements will be met and that adequate barriers to inadvertent intrusion will be provided.

(c) Analyses of the protection of individuals during operations must include assessments of expected exposures due to routine operations and likely accidents during handling, storage, and disposal of waste. The analyses must provide reasonable assurance that exposure will be controlled to meet the requirements of Part 20 of this chapter.

(d) Analyses of the long-term stability of the disposal site and the need for ongoing active maintenance after closure must be based upon analyses of active natural processes such as erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils and surface drainage of the disposal site. The analyses must provide reasonable assurance that there will not be a need for ongoing active maintenance of the disposal site following closure.

§ 61.14 Institutional information.

The institutional information must include:

(a) A certification by the Federal or State government agency which owns the disposal site that the agency is prepared to accept transfer of the license when the provisions of § 61.30 are met, and will assume responsibility for custodial care after site closure and post closure observation and maintenance.

(b) Where the proposed disposal site is on land not owned by the Federal or a State government, the applicant must submit evidence that arrangements have been made for assumption of ownership in fees by the Federal or a State government before the Commission issues a license.

§ 61.15 Financial information.

The financial information must be sufficient to demonstrate that the financial qualifications of the applicant are adequate to carry out the activities for which the license is sought and meet other financial assurance requirements as specified in Subpart E of this part.

§ 61.16 Other information.

Depending upon the nature of the wastes to be disposed of, and the design and proposed operation of the land disposal facility, additional information may be requested by the Commission including the following:

(a) Physical security measures, if appropriate. Any application to receive and possess special nuclear material in quantities subject to the requirements of Part 73 of this chapter shall demonstrate how the physical security requirements of Part 73 will be met. In determining whether receipt and possession will be subject to the requirements of Part 73, the applicant does not need to consider materials after disposal.

(b) Information concerning criticality, if appropriate.

(1) Any applicant to receive and possess special nuclear material in quantities that would be subject to the requirements of § 70.24, "Criticality accident requirements" of Part 70 of this chapter shall demonstrate how the requirements of this section will be met. In determining whether receipt and possession would be subject to the requirements of § 70.24, the applicant does not need to consider the quantity of special nuclear material that has been disposed.

(2) Any application to receive and possess special nuclear material shall describe procedures and provisions for criticality control which address both storage of special nuclear material prior to disposal and waste emplacement for disposal.

§ 61.20 Filing and distribution of application.

(a) An application for a license under this part, and any amendments thereto, shall be filed with the Director, must be signed by the applicant or the applicant's authorized representative, under oath and must consist of 1 signed original and 2 copies.

(b) Another 85 copies of the application and environmental report must be retained by the applicant for distribution in accordance with written instructions from the Director or designee.

(c) *Fees.* Application, amendment, and inspection fees applicable to a license covering the receipt and disposal of radioactive wastes in a land disposal facility are required by Part 170 of this chapter.

§ 61.21 Elimination of repetition.

In its application or environmental report, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Commission if these references are clear and specific.

§ 61.22 Updating of application and environmental report.

(a) The application and environmental report must be as complete as possible in the light of information that is available at the time of submittal.

(b) The applicant shall supplement its application or environmental report in a timely manner, as necessary, to permit the Commission to review, prior to issuance of a license, any changes in the activities proposed to be carried out or new information regarding the proposed activities.

§ 61.23 Standards for issuance of a license.

A license for the receipt, possession, and disposal of waste containing or contaminated with source, special nuclear, or byproduct material will be issued by the Commission upon finding that the issuance of the license will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public, and:

(a) The applicant is qualified by reason of training and experience to carry out the disposal operations requested in a manner that protects health and minimizes danger to life or property.

(b) The applicant's proposed disposal site, disposal design, land disposal facility operations (including equipment, facilities, and procedures), disposal site closure, and postclosure institutional care are adequate to protect the public health and safety in that they provide reasonable assurance that the general population will be protected from releases of radioactivity as specified in the performance objective in § 61.41.

(c) The applicant's proposed disposal site, disposal site design, land disposal facility operations (including equipment, facilities, and procedures), disposal site closure, and postclosure institutional care are adequate to protect the public health and safety in that they provide reasonable assurance that doses to individual inadvertent intruders should not exceed the dose limits established in the performance objective in § 61.42.

(d) The applicant's proposed land disposal facility operations, including equipment, facilities, and procedures, are adequate to protect the public health and safety in that they provide reasonable assurance that the standards for radiation protection set out in Part 20 of this chapter will be met.

(e) The applicant's proposed disposal site, disposal site design, land disposal

facility operations, disposal site closure, and postclosure institutional care are adequate to protect the public health and safety in that they provide reasonable assurance of long-term stability of the disposed waste and the disposal site and should eliminate the need for ongoing active maintenance of the disposal site following closure.

(f) There is adequate demonstration that the applicable technical requirements of Subpart D of this part will be met.

(g) Institutional care is assured for the length of time found necessary to assure the findings in paragraphs (b)–(e) of this section and that the institutional care meets the requirements of §§ 61.59 and 61.60.

(h) The information on financial assurances meets the requirements of subpart E of this part.

(i) The applicant has demonstrated compliance with the requirements of Part 73 of this chapter, insofar as they are applicable to special nuclear material to be possessed under the license.

(j) The applicant has demonstrated compliance with the requirements of § 70.24 of Part 70 of this chapter, insofar as they are applicable to special nuclear material to be possessed under the license.

(k) Any additional information submitted as requested by the Commission pursuant to § 61.16 is adequate.

(l) The requirements of Part 51 of this chapter have been met.

§ 61.24 Conditions of licenses.

(a) A license issued under this part, or any right thereunder, may be transferred, assigned, or in any manner disposed of, either voluntarily, directly or indirectly, through transfer of control of the license to any person, only if the Commission finds, after securing full information, that the transfer is in accordance with the provisions of the Atomic Energy Act and gives its consent in writing in the form of a license amendment.

(b) The licensee shall submit written statements under oath upon request of the Commission, at any time before termination of the license, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked.

(c) The license will be terminated only on the full implementation of the final closure plan as approved by the Commission, including postclosure observation and maintenance.

(d) The licensee shall be subject to the provisions of the Atomic Energy Act now or hereafter in effect, and to all rules, regulations, and orders of the Commission. The terms and conditions of the license are subject to amendment, revision, or modification, by reason of amendments to, or by reason of rules, regulations, and orders issued in accordance with the terms of the Atomic Energy Act.

(e) Any license may be revoked, suspended or modified in whole or in part for any material false statement in the application or any statement of fact required under Section 182 of the Act, or because of conditions revealed by any application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license to the original application, or for failure to operate the facility in accordance with the terms of the license, or for any violation of, or failure to observe any of the terms and conditions of the Act, or any regulation, license or order of the Commission.

(f) Each person licensed by the Commission pursuant to the regulations in this part shall confine possession and use of materials to the locations and purposes authorized in the license.

(g) No radioactive waste may be disposed of until the Commission has inspected the land disposal facility and has found it to be in conformance with the description, design, and construction described in the application for a license.

(h) The Commission may incorporate in any license at the time of issuance, or thereafter, by appropriate rule, regulation or order, additional requirements and conditions with respect to the licensee's receipt, possession, and disposal of source, special nuclear or byproduct material as it deems appropriate or necessary in order to:

(1) Promote the common defense and security;

(2) Protect health or to minimize danger to life or property;

(3) Require such reports and the keeping of records, and to provide for such inspections of activities under the license that may be necessary or appropriate to effectuate the purposes of the Act and regulations thereunder.

(i) Any licensee who receives and possesses special nuclear material under this part in quantities that would be subject to the requirements of § 70.24 of Part 70 of this chapter shall comply with the requirements of that section. The licensee does not need to consider the quantity of materials which it has disposed.

§ 61.25 Changes.

(a) Except as provided for in specific license conditions, the licensee shall not make changes in the land disposal facility or procedures described in the license application. The license will include conditions restricting subsequent changes to the facility and the procedures authorized. These restrictions will fall into three categories of descending importance to public health and safety as follows: (1) those features and procedures which may not be changed without (i) 60 days prior notice to the Commission, (ii) 30 days notice of opportunity for a prior hearing, and (iii) prior Commission approval; (2) those features and procedures which may not be changed without (i) 60 days prior notice to the Commission, and (ii) prior Commission approval; and (3) those features and procedures which may not be changed without 60 days prior notice to the Commission. Features and procedures falling in paragraph (a)(3) of this section may not be changed without prior Commission approval if the Commission, after having received the required notice, so orders.

(b) Amendments authorizing license renewal, site closure, license transfer, or license termination shall be included in paragraph (a)(1) of this section.

§ 61.26 Amendment of license.

(a) An application for amendment of a license must be filed in accordance with § 61.20 and shall fully describe the changes desired.

(b) In determining whether an amendment to a license will be approved, the Commission will apply the criteria set forth in § 61.23.

§ 61.27 Application for renewal or closure.

(a) Any expiration date on a license applies only to the above ground activities and to the authority to dispose of waste. Failure to renew the license in no way relieves the licensee of responsibility for carrying out site closure, postclosure observation and transfer of the license to the site owner. An application for renewal or an application for closure under § 61.28 must be filed at least 30 days prior to license expiration.

(b) Applications for renewal of a license must be filed in accordance with §§ 61.10 through 61.16 and 61.20. Applications for closure must be filed in accordance with §§ 61.20 and 61.28. Information contained in previous applications, statements or reports filed with the Commission under the license may be incorporated by reference if the references are clear and specific.

(c) In any case in which a licensee has timely filed an application for renewal of a license, the license for continued receipt and disposal of licensed materials does not expire until the Commission has taken final action on the application for renewal.

(d) In determining whether a license will be renewed, the Commission will apply the criteria set forth in § 61.23.

§ 61.28 Content of application for closure.

(a) Prior to final closure of the disposal site, or as otherwise directed by the Commission, the applicant shall submit an application to amend the license for closure. This closure application must include a final revision and specific details of the disposal site closure plan included as part of the license application submitted under § 61.12(g) that includes each of the following:

(1) Any additional geologic, hydrologic, or other disposal site data pertinent to the long-term containment of emplaced radioactive wastes obtained during the operational period.

(2) The results of tests, experiments, or any other analyses relating to backfill of excavated areas, closure and sealing, waste migration and interaction with emplacement media, or any other tests, experiments, or analysis pertinent to the long-term containment of emplaced waste within the disposal site.

(3) Any proposed revision of plans for:

(i) Decontamination and/or dismantlement of surface facilities;

(ii) Backfilling of excavated areas; or

(iii) Stabilization of the disposal site for post-closure care.

(4) Any significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.

(b) Upon review and consideration of an application to amend the license for closure submitted in accordance with paragraph (a) of this section, the Commission shall issue an amendment authorizing closure if there is reasonable assurance that the long-term performance objectives of Subpart C of this part will be met.

§ 61.29 Post-closure observation and maintenance.

Following completion of closure authorized in § 61.28, the licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal site until the site closure is complete and the license is transferred by the Commission in accordance with § 61.30. Responsibility for the disposal site must be maintained by the licensee for a minimum of 5 years.

§ 61.30 Transfer of license.

(a) Following closure and the period of post-closure observation and maintenance, the licensee may apply for an amendment to transfer the license to the disposal site owner. The license shall be transferred when the Commission finds:

(1) That the closure of the disposal site has been made in conformance with the licensee's disposal site closure plan, as amended and approved as part of the license;

(2) That reasonable assurance has been provided by the licensee that the performance objectives of Subpart C of this part are met;

(3) That any funds and necessary records for care will be transferred to the disposal site owner;

(4) That the post-closure monitoring program is operational for implementation by the disposal site owner; and

(5) That the Federal or State government agency which will assume responsibility for custodial care of the disposal site is prepared to assume responsibility and assure that the institutional requirements found necessary under § 61.23(g) will be met.

§ 61.31 Termination of license.

(a) Following any period of custodial care needed to meet the requirements found necessary under § 61.23, the licensee may apply for an amendment to terminate the license.

(b) This application must be filed, and will be reviewed, in accordance with the provision of § 61.20 and of this section.

(c) A license is terminated only when the Commission finds:

(1) That the institutional care requirements found necessary under § 61.23(g) have been met; and

(2) That any additional requirements resulting from new information developed during the custodial period have been met.

Subpart C—Performance Objectives

§ 61.40 General requirement.

Land disposal facilities must be sited, designed, operated, closed, and controlled after closure so that reasonable assurance exists that exposures to humans are within the limits established in the performance objectives in §§ 61.41 through 61.44.

§ 61.41 Protection of the general population from releases of radioactivity.

Concentrations of radioactive material which may be released to the general environment in ground water, surface water, air, soil, plants, or animals must not result in an annual dose exceeding an equivalent of 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other organ of any member of the public. In addition, concentrations of radioactive material in groundwater must not exceed the maximum contaminant levels established in the National Primary Drinking Water Standards (40 CFR Part 141) at the nearest public drinking water supply (a limit of 10 pCi/l above background must be used for uranium and thorium).

§ 61.42 Protection of individuals from inadvertent intrusion.

Design operation and closure of the land disposal facility must not result in conditions where any individual inadvertently intruding into the disposal site and occupying the site or contacting the waste after active institutional controls over the disposal site are removed, could receive a dose to the whole body in excess of 500 millirem per year.

§ 61.43 Protection of individuals during operations.

Operations at the land disposal facility must be conducted in compliance with the standards for radiation protection set out in Part 20 of this chapter.

§ 61.44 Stability of the disposal site after closure.

The disposal facility must be designed, used, operated, and closed to achieve long-term stability of the disposed waste and the disposal site and to eliminate the need for ongoing active maintenance of the disposal site following closure so that only surveillance, monitoring, or minor custodial care are required.

Subpart D—Technical Requirements for Land Disposal Facilities

§ 61.50 Disposal site suitability requirements for land disposal.

(a) Disposal site suitability for near-surface disposal.

(1) The purpose of this section is to specify the minimum characteristics a disposal site must have to be acceptable for use as a near-surface disposal site. The primary emphasis in disposal site suitability is given to isolation of wastes, a matter having long-term impacts, and to disposal site features that assure that the long-term performance objectives of Subpart C of this part are met, as opposed to short-term convenience or benefits.

(2) The disposal site shall be capable of being characterized, modeled, analyzed and monitored.

(3) Within the region or state where the facility is to be located, a disposal site should be selected so that projected population growth and future developments are not likely to affect the ability of the disposal facility to meet the performance objectives of Subpart C of this part.

(4) Areas must be avoided having economically significant natural resources which, if exploited, would result in failure to meet the performance objectives of Subpart C of this part.

(5) The disposal site must be generally well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain, coastal high-hazard area or wetland.

(6) Upstream drainage areas must be minimized to decrease the amount of runoff which could erode or inundate waste disposal units.

(7) The disposal site must provide sufficient depth to the water table that ground water intrusion, perennial or otherwise, into the waste will not occur. The Commission will consider exceptions to this requirement if it can be conclusively shown that disposal site characteristics will result in diffusion being the predominant means of radionuclide movement and the rate of movement will result in the performance objectives of Subpart C of this part being met.

(8) Any groundwater discharge to the surface within the disposal site must not originate within the hydrogeologic unit used for disposal.

(9) Areas must be avoided where tectonic processes such as faulting, folding, seismic activity, or vulcanism may occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of Subpart C, of this part or may preclude defensible modeling and prediction of long-term impacts.

(10) Areas must be avoided where surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of Subpart C, of this part or may preclude defensible modeling and prediction of long-term impacts.

(11) The disposal site must not be located where nearby facilities or activities could adversely impact the ability of the site to meet the performance objectives of Subpart C of this part or significantly mask the environmental monitoring program.

(b) Disposal site suitability requirements for land disposal other than near-surface (reserved).

§ 61.51 Disposal site design for land disposal.

(a) Disposal site design for near-surface disposal.

(1) Site design features must be directed toward long-term isolation and avoidance of the need for continuing active maintenance.

(2) The disposal site design and operation must be compatible with the disposal site closure and stabilization plan and lead to disposal site closure that provides reasonable assurance that the performance objectives of Subpart C of this part will be met.

(3) The disposal site must be designed to complement and improve the ability of the disposal site's natural characteristics to assure that the performance objectives of Subpart C of this part will be met.

(4) Covers must be designed to prevent water infiltration, to direct precolating or surface water away from the buried waste, and to resist degradation by surface geologic processes and biotic activity.

(5) Surface features must direct surface water drainage away from disposal units at velocities and gradients which will not result in erosion that will require ongoing active maintenance in the future.

(6) The disposal site must be designed to eliminate the contact of water with waste during storage, the contact of standing water with waste during disposal, and the contact of percolating or standing water with wastes after disposal.

(7) The disposal site shall be used exclusively for the disposal of radioactive wastes.

(b) Disposal site design for other than near-surface disposal (reserved).

§ 61.52 Land disposal facility operation and disposal site closure.

(a) Near-surface disposal facility operation and disposal site closure.

(1) Wastes designated as Class A segregated, pursuant to § 61.55, must be segregated from other wastes by placing in disposal units which are sufficiently separated from other units so that there is no interaction between them.

(2) Wastes designated as Class B stable, pursuant to § 61.55, shall be disposed of in accordance with the requirements of paragraphs (a)(4) through (10) of this section.

(3) Wastes designated as Class C intruder, pursuant to § 61.55, must be disposed of so that the top of the waste is a minimum of 5 meters below the surface of the cover or must be disposed of with natural or engineered barriers that are designed to protect against an inadvertent intrusion for at least 500 years.

(4) Wastes must be emplaced in an orderly manner that maintains the package integrity during emplacement and disposal.

(5) Void spaces between waste packages must be filled with earth or other material to reduce future subsidence within the fill.

(6) Waste must be placed and covered in a manner that limits the gamma radiation at the surface of the cover to levels that are within a few percent above the natural background levels of the site.

(7) The boundaries and locations of each disposal unit (e.g., trenches) must be accurately located and mapped by means of a land survey. Near-surface disposal units must be marked in such a way that the boundaries of each unit can be easily defined. Three permanent survey marker control points, referenced to United States Geological Survey (USGS) or National Geodetic Survey (NGS) survey control stations, must be established on the site to facilitate surveys. The USGS or NGS control stations must provide horizontal and vertical controls as checked against USGS or NGS record files.

(8) A buffer zone of land must be maintained between any buried waste and the disposal site boundary. The buffer zone shall extend at least 100 feet outward from the outermost waste disposal units.

(9) Adequate closure and stabilization measures must be carried out as each disposal unit (e.g., each trench) is filled and covered.

(10) Active waste disposal operations must not have an adverse effect on completed closure and stabilization measures.

(b) Facility operations and disposal site closure for land disposal facilities other than near-surface (reserved).

§ 61.53 Environmental monitoring.

(a) At the time a license application is submitted, the applicant shall have conducted a preoperational monitoring program to provide basic environmental data on the disposal site characteristics. The applicant shall obtain information about the ecology, meteorology, climate, hydrology, geology, and seismology of the disposal site. For those characteristics that are subject to seasonal variation, data must cover at least a twelve month period.

(b) During the land disposal facility site construction and operation, the licensee shall maintain a monitoring program. Measurements and observations must be made and recorded to provide data to evaluate the potential health and environmental impacts during both the construction and the operation of the facility and enable the evaluation of long-term effects and the need for mitigative measures.

(c) After the disposal site is closed, the licensee responsible for post-operational surveillance of the disposal site shall maintain a monitoring system based on the operating history and the closure and stabilization of the disposal site. The monitoring system must be capable of providing early warning of migration of radionuclides from the disposal site.

(d) The licensee must have plans for taking corrective measures if migration of radionuclides would incidate that the performance objectives of Subpart C would not be met.

§ 61.54 Alternative requirements for design and operations.

The Commission may, upon request or on its own initiative, authorize provisions other than those set forth in §§ 61.51 through 61.53 for the segregation and disposal of waste and for the design and operation of a land disposal facility on a specific basis, if it finds reasonable assurance of compliance with the performance objectives of Subpart C of this part.

§ 61.55 Waste classification.

Radioactive wastes are defined to fall within one of the following categories:

(a) *Class A segregated waste* is waste that is segregated at the disposal site and disposed of with only minimum requirements on waste form and characteristics and has the following properties:

(1) the radioisotope concentration does not exceed the values shown in Column 1, Table I, of this section; and

(2) the physical form and characteristics must meet the minimum requirements set forth in § 61.56(a).

(b) *Class B stable waste* is waste that must meet more rigorous requirements on waste form to assure stability after disposal, and has the following properties:

(1) the radioisotope concentration exceeds the concentrations shown in Column 1; and,

Table 1

Isotope	Column 1[1]	Column 2[2]	Column 3[3]
Any with half-life less than 5 years	700	70,000	Theoretical maximum specific activity.
H-3	40	10[5]	Theoretical maximum specific activity.[4]
C-14	0.8	0.8	0.8.[4]
Ni-59	2.2	2.2	2.2.
Co-60	700	70,000	Theoretical maximum specific activity.
Ni-63	3.5	70	70.
Nb-94	0.002	0.002	0.002.
Sr-90	0.04	150	700.
Tc-99	0.3	0.3	0.3.[4]
I-129	0.008	0.008	0.008.[4]
Cs-135	84	84	84.
Cs-137	1.0	44	4600.
Enriched Uranium	0.04	0.04	0.04.
Natural or Depleted uranium	0.05	0.05	0.05.
Alpha-emitting transuranic isotopes			10 nCi/g.
Pu-241			350 n Ci/g.

[1] Maximum concentration for Class A segregated waste. Above this, it is Class B stable waste μCi/cm³.
[2] Concentrations above which some wastes become Class C intruder waste μCi/cm³.
[3] Maximum concentration for any waste class μCi/cm³.
[4] Near-surface disposal facilities will be limited to a specified quantity for the disposal site. This quantity will be determined at the time the license is issued and will be governed largely by the characteristics of the site. Therefore, the total activity of these isotopes in each package of waste must be shown on the shipping manifest (see § 20.311 of this chapter).
For isotopes contained in metals, metal alloys, or permanently fixed on metal as contamination, the values above may be increased by a factor of ten, except natural or depleted uranium which can be the natural specific activity.
For isotopes not listed above, use the values for Sr-90 for beta emitting isotopes with little or no gamma radiation; the values for Cs-137 for beta emitting isotopes with significant gamma radiation; and the values for U-235 for alpha emitting isotopes other than radium.
Wastes containing chelating agents in concentrations greater than 0.1% are not permitted except as specifically approved by the Commission.
For mixtures of the above isotopes, the sum of ratios of an isotope concentration in waste to the concentration in the above table shall not exceed one for any waste class.
Concentrations may be averaged over volume of the package. For a 55 gallon drum multiply the concentration limits by 200,000 to determine allowable total activity.
Until establishment and adoption of other values or criteria, the values in this table (or greater concentrations as may be approved by the Commission in particular cases) shall be used in categorizing waste for near-surface disposal.

(2) The physical form and characteristics of the waste must meet the *minimum* and *stability* requirements set forth in § 61.56.

(c) *Class C intruder waste* is waste that not only must meet more rigorous requirements on waste form to assure stability but also requires special measures at the disposal facility to protect against inadvertent intrusion. This class has the following properties:

(1) The radioisotope concentrations exceed those shown in Column 2; and

(2) The physical form and characteristics meet the *minimum* and *stability* requirements set forth in § 61.56 of this part.

(d) Waste that has a radioisotope concentration that exceeds the values shown in Column 3, Table I of this section, is not generally acceptable for near-surface disposal and shall not be disposed of without specific Commission approval pursuant to § 61.58 of this part.

§ 61.56 Waste characteristics.

(a) The following requirements are *minimum* requirements for all classes of waste and are intended to facilitate handling at the disposal site and provide protection of health and safety.

(1) The waste must be packaged and the waste form and packaging must meet all applicable transportation requirements of the Commission set forth in 10 CFR Part 71 and of the Department of Transportation set forth in 49 CFR Parts 171–179, as applicable.

(2) Wastes must not be packaged for disposal in cardboard or fiberboard boxes.

(3) Waste containing liquids must be packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(4) Waste must not be readily capable of detonation or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.

(5) Waste must not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste.

(6) Wastes must not be pyrophoric. Pyrophoric materials contained in wastes shall be treated, prepared, and packaged to be nonflammable.

(7) Wastes in a gaseous form must be packaged at a pressure that does not exceed one atmosphere at 20° C. Total activity must not exceed 100 curies per container.

(8) Wastes containing biological, pathogenic, or infectious material must be treated to reduce to the maximum extent practicable the potential hazard.

(b) The requirements in this section are intended to provide *stability* of the waste for at least 150 years. Stability is intended to assure that the waste does not degrade and promote slumping, collapse, or other failure of the disposal unit and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent

intruder, since it provides a recognizable and nondispersible waste.

(1) Waste must have structural stability. A structurally stable waste form will maintain its physical dimensions within 5% and its form, under the expected disposal conditions of compressive load of 50 psi, and factors such as the presence of moisture, and microbial activity, and internal factors such as as radiation effects and chemical changes. Structural stability can be provided by the waste form itself, processing the waste to a stable form, or placing the waste in a disposal container or structure that provides stability after disposal.

(2) Notwithstanding the provisions in § 61.56(a)(3), liquid wastes, or wastes containing liquid, must be converted into a form that contains as little free standing noncorrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1% of the volume of the waste.

(3) Void spaces within the waste and between the waste and its package must be reduced to the extent practicable.

§ 61.57 Labeling.

Each package of waste must be clearly labeled to identify whether it is *Class A segregated, Class B stable,* or *Class C intruder,* in accordance with § 61.55.

§ 61.58 Alternative requirements for waste classification and characteristics.

The Commission may, upon request or on its own initiative, authorize other provisions for the classification and characteristics of waste on a specific basis, if, after evaluation, of the specific characteristics of the waste, disposal site, and method of disposal, it finds reasonable assurance of compliance with the performance objectives in Subpart C of this part.

§ 61.59 Institutional requirements.

(a) *Land ownership.* Disposal of radioactive waste received from other persons may be permitted only on land owned in fee by the Federal or a State government.

(b) *Institutional control.* The land owner or custodial agency shall carry out an active institutional control program to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator. The active control program must also include, but not be limited to, carrying out an environmental monitoring program at the disposal site, periodic suveillance, minor custodial care, and other requirements as deterrmined by the Commission and administration of funds to cover the costs for these activities. The period of active controls will be determined by the Commission, but active controls may not be relied upon for more than 100 years following transfer of control of the disposal site to the owner.

Subpart E—Financial Assurances

§ 61.61 Applicant qualification and assurances.

Each applicant shall show that it either possesses the necessary funds or has reasonable assurance of obtaining the necessary funds, or by a combination of the two, to cover the estimated costs of conducting all licensed activities over the planned operating life of the project, including costs of construction and disposal.

§ 61.62 Funding for disposal site closure and stabilization.

(a) The applicant shall provide assurances prior to the commencement of operations that sufficient funds will be available to carry out disposal site closure and stabilization, including: (1) decontamination or dismantlement of land disposal facility structures; and (2) closure and stabilization of the disposal site so that following transfer of the disposal site to the owner, the need for ongoing active maintenance is eliminated and only minor custodial care, surveillance, and monitoring are required. These assurances shall be based on Commission approved cost estimates reflecting the Commission approved plan for disposal site closure and stabilization. The applicant's cost estimates must take into account total capital costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(b) In order to avoid unnecessary duplication and expense, the Commission will accept financial sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of other Federal or State agencies and/or local governing bodies for such decontamination, closure and stabilization. The Commission will accept this arrangement only if they are considered adequate to satisfy these requirements and that the portion of the surety which covers the closure of the disposal site is clearly identified and committed for use in accomplishing these activities.

(c) The licensee's surety mechanism will be reviewed by the Commission annually to assure sufficient funds for completion of the closure plan if the work has to be performed by an independent contractor.

(d) The amount of surety liability should change in accordance with the predicted cost of future closure and stabilization. Factors affecting closure and stabilization cost estimates include: inflation; increases in the amount of disturbed land; changes in engineering plans; closure and stabilization that has already been accomplished and any other conditions affecting costs. This will yield a surety that is at least sufficient at all times to cover the costs of closure of the disposal units that are expected to be used before the next license renewal.

(e) The term of the surety mechanism must be open ended unless it can be demonstrated that another arrangement would provide an equivalent level of assurance. This assurance could be provided with a surety mechanism which is written for a specified period of time (e.g., five years) yet which must be automatically renewed unless the party who issues the surety notifies the beneficiary (the Commission) and the principal (the licensee) not less than 90 days prior to the renewal date of its intention not to renew. In such a situation the licensee must submit a replacement surety within 30 days after notification of cancellation. If the licensee fails to provide a replacement surety acceptable to the Commission, the Commission will collect on the original surety.

(f) Proof of forfeiture must not be necessary to collect the surety so that in the event that the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described above would have to be clearly stated on any surety instrument which is not open-ended, and must be agreed to by all parties. Liability under the surety mechanism must remain in effect until the closure and stabilization program has been completed and approved by the Commission and the license has been transferred to the site owner.

(g) Financial surety arrangements generally acceptable to the Commission include: surety bonds, cash deposits, certificates of deposit, deposits of government securities, escrow accounts, irrevocable letters or lines of credit, trust funds, and combinations of the above or such types of arrangements as may be approved by the Commission. However, self-insurance, or any arrangement which essentially constitutes pledging the assets of the licensee, will not satisfy the surety

requirement for private sector applicants since this provides no additional assurance other than that which already exists through license requirements.

§ 61.63 Financial assurances for institutional control.

(a) Prior to the issuance of the license, the applicant shall provide for Commission review and approval a copy of a binding arrangement, such as a lease, between the applicant and the disposal site owner that ensures that sufficient funds will be available to cover the costs of monitoring, and any required maintenance during the institutional control period. The binding arrangement will be reviewed periodically by the Commission to ensure that changes in inflation, technology and disposal facility operations are reflected in the arrangements.

(b) Subsequent changes to the binding arrangement specified in paragraph (a) of this section relevant to institutional control shall be submitted to the Commission for approval.

Subpart F—Participation by State Governments and Indian Tribes

§ 61.70 Scope.

This subpart describes mechanisms through which the Commission will implement a formal request from a State or Tribal government to participate in the review of a license application for a land disposal facility. Nothing in this subpart may be construed to bar the State or tribal-governing body from participating in subsequent Commission proceedings concerning the license application as provided under Federal law and regulations.

§ 61.71 State and tribal government consultation.

Upon request of a State or tribal government body, the Director may make available Commission staff to discuss with representatives of the State or tribal governing body information submitted by the applicant, applicable Commission regulations, licensing procedures, potential schedules, and the type and scope of State activities in the license review permitted by law. In addition, staff will be made available to consult and cooperate with the State or tribal governing body in developing proposals for participation in the license review.

§ 61.72 Filing of proposals for State and tribal participation.

(a) Following publication in the **Federal Register** of the notice of docketing, but no later than 120 days following docketing of an application submitted under § 61.20, a State or tribal-governing body potentially affected a near-surface disposal facility at the proposed site may submit to the Director a proposal for participation in the review of the license application. A State or tribal governing body may also submit to the Director a proposal for participation in the review of any subsequent application for license renewal or amendment.

(b) Proposals for participation in the licensing process must be made in writing and must be signed by the Governor of the State or the official otherwise provided for by State or Tribal law.

(c) At a minimum, proposals must contain each of the following items of information:

(1) A general description of how the State or tribe wishes to participate in the licensing process specifically identifying those issues it wishes to review.

(2) A description of material and information which the State or tribe plans to submit to the Commission for consideration in the licensing process. A tentative schedule referencing steps in the review and calendar dates for planned submittals should be included.

(3) A description of any work that the State or tribe proposes to perform for the Commission in support of the licensing process.

(4) A description of state or tribal plans to facilitate local government and citizen participation.

(5) A preliminary estimate of the types and extent of impact which the State expects, should be a disposal facility be located as proposed.

(6) If desired, any requests for educational or information services (seminars, public meetings) or other actions from the Commission such as establishment of additional Public Document Rooms or exchange of State personnel under the Intergovernmental Personnel Act.

§ 61.73 Commission approval of proposals.

(a) Upon receipt of a proposal submitted in accordance with § 61.72, the Director will arrange for a meeting between the representatives of the State or tribal governing body and the Commission staff to discuss the proposal and to ensure full and effective participation by the State or tribe in the Commission's license review.

(b) If requested by a State or tribal governing body, the Director may approve all or any part of a proposal if the Director determines that:

(1) The proposed activities are within the scope of Commission statutory responsibility and the type and magnitude of impacts which the State or tribe may bear are sufficient to justify their participation; and

(2) The proposed activities will contribute productively to the licensing review.

(c) The decision of the Director will be transmitted in writing to the Governor or the designated official of the tribal governing body.

(d) Upon the written request of the Governor or the tribal official, any determination of the Director under this section may be reviewed by the Commission.

Subpart G—Records, Reports, Tests, and Inspections

§ 61.80 Maintenance of records, reports, and transfers.

(a) Each licensee shall maintain any records and make any reports in connection with the licensed activities as may be required by the conditions of the license or by the rules, regulations, and orders of the Commission.

(b) Records which are required by the regulations in this Part or by license conditions must be maintained for a period specified by the appropriate regulations in this chapter or by license condition. If a retention period is not otherwise specified, these records must be maintained and transferred as a condition of license termination unless the Commission otherwise authorizes their dispostion.

(c) Records which must be maintained pursuant to this Part may be the original or a reproduced copy of microfilm if this reproduced copy or microfilm is capable of producing a clear and legible copy.

(d) If there is a conflict between the Commission's regulations in this part, license condition, or other written Commission approval or authorization pertaining to the retention period for the same type of record, the longest retention period specified takes precedence.

(e) Notwithstanding paragraphs (a) through (d) of this section, copies of records of the location and the quantity of radioactive wastes contained in the disposal site must be transferred upon license termination to the chief executive of the nearest municipality, the chief executive of the county in which the facility is located, the county zoning board or land development and planning agency, the state governor and other State, local and Federal governmental agencies as designated by

the Commission at the time of license termination.

(f) Each licensee shall comply with the reporting requirements of § 30.55 of this chapter, § 40.64 of this chapter, and § 70.53 and § 70.54 of Part 70 of this chapter if the quantities or activities of materials received or transferred exceed the limits of these sections. Inventory reports are not required for materials after disposal.

(g) Each licensee authorized to dispose of radioactive waste received from other persons, shall, upon each issuance of its annual financial report, if any, including any certified financial statements, file a copy thereof with the Commission in order to update the information base for determining financial qualifications.

(h)(1) Each licensee authorized to dispose of waste materials received from other persons, pursuant to this part, shall submit annual reports to the appropriate Commission regional office shown in Appendix D of Part 20 of this chapter, with copies to the Director of the Office of Inspection and Enforcement and the Director of the Division of Waste Management, USNRC, Washington, D.C. 20555. Reports shall be submitted by the end of the first calendar quarter of each year for the preceding year; (2) the reports shall include (i) specification of the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in airborne effluents during the preceding year, (ii) the results of the environmental monitoring program, (iii) a summary of licensee disposal site maintenance activities, (iv) summary of activities and quantities of radionuclides disposed of, (v) any instances in which observed site characteristics were different from those described in the application for a license, and (vi) any other information the Commission may require. If the quantities of radioactive materials released during the reporting period, monitoring results, or maintenance performed are significantly different from those expected in the materials previously reviewed as part of the licensing action, the report must cover this specifically.

(i) Each licensee shall report in accordance with the requirements of § 70.52 of this chapter.

(j) Any transfer of byproduct, source, and special nuclear materials by the licensee is subject to the requirements in § 30.41 of Part 30 of this chapter, § 40.51 of Part 40 of this chapter, and § 70.42 of Part 70 of this chapter. Byproduct, source and special nuclear material means materials as defined in these Parts, respectively.

§ 61.81 Tests at land disposal facilities.

(a) Each licensee shall perform, or permit the Commission to perform, any tests as the Commission deems appropriate or necessary for the administration of the regulations in this Part, including tests of:

(1) Radioactive wastes and facilities used for the receipt, storage, treatment, handling and disposal of radioactive wastes;

(2) Radiation detection and monitoring instruments; and

(3) Other equipment and devices used in connection with the receipt, possession, handling, treatment, storage, or disposal of radioactive waste.

§ 61.82 Commission inspections of land disposal facilities.

(a) Each licensee shall afford to the Commission at all reasonable times opportunity to inspect radioactive waste and the premises, equipment, operations, and facilities in which radioactive wastes are received, possessed, handled, treated, stored, or disposed.

(b) Each licensee shall make available to the Commission for inspection, upon reasonable notice, records kept by it pursuant to the regulations in this chapter. Authorized repesentatives of the Commission may copy, for the Commission's use, any record required to be kept pursuant to this part.

§ 61.83 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Atomic Energy Act of 1954, as amended, or any regulation or order issued thereunder. A court order may be obtained for the payment of a civil penalty imposed pursuant to section 234 of the Act for violation of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Act, or section 206 of the Energy Reorganization Act of 1974, or any rule.

The following amendments are also made to existing parts of the regulations in this chapter.

PART 2—RULES OF PRACTICE

2. In § 2.101, paragraph (a)(2), (b), and (d) are revised to read as follows:

§ 2.101 Filing of application.

(a) * * *

(2) Each application for a license for a facility will be assigned a docket number. However, to allow a determination as to whether an application for a construction permit or operating license for a production or utilization facility is complete and acceptable for docketing, it will be initially treated as a tendered application after it is received and a copy of the tendered application will be available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Generally, that determination will be made within a period of thirty (30) days.

* * * * *

(b) Each application for a license to receive radioactive waste from other persons for disposal under Part 61 of this chapter and the accompanying environmental report shall be processed in accordance with the provisions of this paragraph.

(1) To allow a determination as to whether the application or environmental report is complete and acceptable for docketing, it will be initially treated as a tendered document, and a copy will be available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. One original and two copies shall be filed to enable this determination to be made.

(i) Upon receipt of a tendered application, the Commission will publish in the **Federal Register** notice of the filed application and will notify the governors, legislatures and other appropriate State, county, and muncipal officials and tribal governing bodies of the States and areas containing or potentially affected by the activities at the proposed site and the alternative sites. The Commission will inform these officials that the Commission staff will be available for consultation pursuant to § 61.71 of this chapter. The **Federal Register** notice will note the opportunity for interested persons to submit views and comments on the tendered application for consideration by the Commission and applicant.

(ii) The Commission will also post a public notice in a newspaper or newspapers of general circulation in the affected States and areas summarizing information contained in the applicant's tendered application and noting the opportunity to submit views and comments.

(iii) When the Director of Nuclear Material Safety and Safeguards determines that the tendered document is complete and acceptable for docketing, a docket number will be assigned and the applicant will be notified of the determination. If it is determined that all or any part of the tendered document is incomplete and therefore not acceptable for processing, the applicant will be informed of this determination and the aspects in which the document is deficient.

(2) With respect to any tendered document that is acceptable for

docketing, the applicant will be requested to (i) submit to the Director of Nuclear Material Safety and Safeguards such additional copies as the regulations in Parts 61 and 51 of this chapter require, (ii) serve a copy on the chief executive of the municipality in which the waste is to be disposed of or, if the waste is not to be disposed of within a municipality, serve a copy on the chief executive of the county in which the waste is to be disposed of (iii) make direct distribution of additional copies to Federal, State, Indian Tribe, and local officials in accordance with the requirements of this chapter and written instructions from the Director of Nuclear Material Safety and Safeguards and (iv) serve a notice of availability of the application and environmental report on the chief executives or governing bodies of the municipalities or counties which have been identified in the application and environmental report as the location of all or part of the alternative sites if copies are not distributed under paragraph (b)(2)(iii) of this section to the executives or bodies. All distributed copies shall be completely assembled documents identified by docket number. Subsequently distributed amendments, however, may include revised pages to previous submittals and, in such cases, the recipients will be responsible for inserting the revised pages. In complying with the requirements of paragraph (b) of this section the applicant shall not make public distribution of those parts of the application subject to § 2.790(d).

(3) The tendered document will be formally docketed upon receipt by the Director of Nuclear Material Safety and Safeguards of the required additional copies. Distribution of the additional copies shall be deemed to be complete as of the time the copies are deposited in the mail or with a carrier prepaid for delivery to the designated addressees. The date of docketing shall be the date when the required copies are received by the Director of Nuclear Material Safety and Safeguards. Within ten (10) days after docketing, the applicant shall submit to the Director of Nuclear Material Safety and Safeguards a written statement that distribution of the additional copies to Federal, State, Indian Tribe, and local officials has been completed in accordance with requirements of this section and written instructions furnished to the applicant by the Director of Nuclear Material Safety and Safeguards.

(4) Amendments to the application and environmental report shall be filed and distributed and a written statement shall be furnished to the Director of Nuclear Material Safety and Safeguards in the same manner as for the initial application and environmental report.

(5) The Director of Nuclear Material Safety and Safeguards will cause to be published in the **Federal Register** a notice of docketing which identifies the State and location of the proposed waste disposal facility and will give notice of docketing to the governor of that State and other officials listed in paragraph (b)(3) of this section and, in a reasonable period thereafter, publish in the **Federal Register** a notice pursuant to § 2.105 offering opportunity for a hearing to the applicant and other affected persons.

* * * * *

(d) The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will give notice of the docketing of the public health and safety, common defense and security, and environmental parts of an application for a license for a facility to the Governor or other appropriate official of the State in which the facility is to be located or the activity is to be conducted and will cause to be published in the **Federal Register** a notice of docketing of the application which states the purpose of the application and specifies the location at which the proposed activity would be conducted.

* * * * *

3. Section 2.103(a) is revised to read as follows:

§ 2.103 Action on applications for byproduct, source, special nuclear material, and operator licenses.

(a) If the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, finds that an application for a byproduct, source, special nuclear material, or operator license complies with the requirements of the Act, the Energy Reorganization Act, and this chapter, he will issue a license. If the license is for a facility or if it is to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, will inform the State, Indian Tribe, and local officials specified in § 2.104(e) of the issuance of the license.

* * * * *

4. Section 2.104(e) is revised to read as follows:

§ 2.104 Notice of hearing.

* * * * *

(e) The Secretary will give timely notice of the hearing to all parties and to other persons, if any, entitled by law to notice. The Secretary will transmit a notice of hearing on an application for a facility license or for a license for receipt of waste radioactive material from other persons for the purpose of disposal under Part 61 of this chapter or for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter to the governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county (or to the Tribal organization, if it is to be so located or conducted within an Indian reservation).

5. Section 2.105(a)(2) is revised to read as follows:

§ 2.105 Notice of proposed action.

(a) * * *

(2) A license for receipt of waste radioactive material from other persons for disposal by the waste disposal licensee under Part 61 of this chapter.

* * * * *

6. Section 2.106 is amended by adding a new paragraph (d) to read as follows:

§ 2.106 Notice of issuance.

* * * * *

(d) The Director of Nuclear Material Safety and Safeguards will also cause to be published in the **Federal Register** notice of, and will inform the State and local officials or tribal governing body specified in § 2.104(e) of any licensing action with respect to a license to receive radioactive waste from other persons for disposal under Part 61 of this chapter or the amendment of such a license for which a notice of proposed action has been previously published.

7. Section 2.764 is amended by adding a new paragraph (e), and by revising paragraphs (a) and (b) to read:

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.[1]

(a) Except as provided in paragraphs (c), (d), and (e) of this section, an initial decision directing the issuance or amendment of a construction permit, a construction authorization, or an operating license shall be effective immediately upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become

immediately effective, subject to the review thereof and further decision by the Commission upon exceptions filed by any party pursuant to § 2.762 or upon its own motion.

(b) Except as provided in paragraphs (c), (d), and (e) of this section, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, notwithstanding the filing of exceptions, shall issue a construction permit, a construction authorization, or an operating license, or amendments thereto, authorized by an initial decision, within ten (10) days from the date of issuance of the decision.

* * * * *

(e) An initial decision directing the issuance of a license under Part 61 of this chapter (relating to land disposal of radioactive waste) or any amendment to such a license authorizing actions which may significantly affect the health and safety of the public, shall become effective only upon order of the Commission. The Director of Nuclear Material Safety and Safeguards shall not issue a license under Part 61 of this chapter, or any amendment to such a license which may significantly affect the health and safety of the public, until expressly authorized to do so by the Commission.

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS; INSPECTIONS

§ 19.2 [Amended]

8. Section 19.2 is amended by adding "61," following "40, 60."

§ 19.3 [Amended]

9. In § 19.3, paragraph (d) is amended by adding "61," following "40, 60."

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

§ 20.2 [Amended]

10. Section 20.2 is amended by adding "61," following "40, 60."

§ 20.3 [Amended]

11. In § 20.3, paragraph (a)(9) is amended by adding "61," following "40, 60."

12. In § 20.301, paragraph (a) is amended by adding "61," following "40, 60," and paragraph (b) is revised to read as follows:

§ 20.301 General requirement.

* * * * *

(b) As authorized under § 20.302 or Part 61 of this chapter; or

* * * * *

§ 20.302 [Amended]

13. In § 20.302, paragraph (b) is removed.

14. A new § 20.311 is added to read as follows:

§ 20.311 Transfer for disposal and manifests.

(a) *Purpose.* The requirements of this section are designed to control transfers and establish a manifest tracking system and supplement existing requirements concerning transfers and recordkeeping.

(b) Each shipment of radioactive waste to a licensed land disposal facility must be accompanied by a shipment manifest that contains the name, address, and telephone number of the person generating the waste as well as the name, address, and telephone number of the person transporting the waste to the land disposal facility. The manifest must also indicate as completely as practicable: the type of waste; the waste volume and mass; radionuclide identity and concentration; total radioactivity; and chemical form. The solidification agent must be specified. Wastes classified as Class A segregated, Class B stable, or Class C intruder in § 61.55 of this part chapter must be clearly identified as such in the manifest. The total quantity of noted isotopes identified in Table 1, Part 61 of this chapter must be shown.

(c) Each manifest must include a certification by the waste generator that the transported materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation and the Commission. An authorized representative of the waste generator shall sign and date the manifest.

(d) Any generating licensee who transfers radioactive waste to a land disposal facility or a licensed waste collector or processor shall:

(1) Prepare all wastes so that the waste is classified according to § 61.55 and meets the waste characteristics requirements in § 61.56 of this chapter;

(2) Label each package of waste to identify whatever it is, Class A segregated, Class B stable, or Class C intruder waste, in accordance with § 61.55 of this chapter;

(3) Conduct a quality assurance program to assure compliance with §§ 61.55 and 61.56 of this chapter; the program must include management audits;

(4) Prepare shipping manifests to meet the requirements of §§ 20.311 (b) and (c) of this part;

(5) Forward a copy of the manifest to the intended recipient, at the time of shipment;

(6) Include one copy of the manifest with the shipment;

(7) Retain a copy of the manifest until receipt of waste is acknowledged; and,

(8) Investigate late or missing shipments or any part of a shipment in accordance with paragraph (h) of this section.

(e) Any waste collector licensee who handles only prepackaged waste shall:

(1) Acknowledge receipt of the waste from the generator within one week of receipt;

(2) Prepare a new manifest to reflect consolidated shipments; the new manifest shall serve as a listing or index for the detailed generator manifests. Copies of the generator manifests shall be a part of the new manifest. The collector licensee shall certify that nothing has been done to the waste which would invalidate the generator's certification;

(3) Forward a copy of the new manifest to the land disposal facility operator at the time of shipment;

(4) Include the new manifest with the shipment to the disposal site;

(5) Retain a copy of the manifest until receipt of waste is acknowledged; and

(6) Investigate late or missing shipments or any part of a shipment in accordance with paragraph (h) of this section.

(f) Any licensed waste processor who treats or repackages wastes shall:

(1) Acknowledge receipt of the waste from the generator within one week of receipt;

(2) Prepare a new manifest that meets the requirements of paragraphs (b) and (c) of this section. Preparation of the new manifest reflects that the processor is responsible for the waste;

(3) Prepare all wastes so that the waste is classified according to § 61.55 and meets the waste characteristics requirements in § 61.56 of this chapter;

(4) Label each package of waste to identify whatever it is, Class A segregated, Class B stable, or Class C intruder waste, in accordance with § 61.55 of this chapter;

(5) A quality assurance program shall be conducted to assure compliance with §§ 61.55 and 61.56 of this chapter. The program shall include management audits;

(6) Forward a copy of the new manifest to the disposal site operator or waste collector at the time of shipment;

(7) Include the new manifest with the shipment;

(8) Retain copies of original manifests and new manifests until receipt of the wastes is acknowledged; and

(9) Investigate late or missing shipments in accordance with paragraph (h) of this section.

(g) The land disposal facility operator shall:

(1) Acknowledge to the shipper receipt of the waste within one week of receipt. The shipper to be notified is the licensee who last possessed the waste and transferred the waste to the operator;

(2) Following receipt and acceptance of a shipment of radioactive waste accompanied by a manifest, record on the shipment manifest the date of receipt of the waste, the date of disposal of the waste, the location in the disposal site, the condition of the waste packages as received, and any evidence of leaking or damaged packages or radiation or contamination levels in excess of limits specified in DOT and Commission regulations. The licensee shall also briefly describe any repackaging operations of any of the waste packages included in the shipment, plus any other information required by the Commission as a license condition;

(3) Sign, date, and certify that the transported materials have been received, classified, handled, stored, and disposed of in compliance with Commission regulations and all license conditions;

(4) Maintain copies of all completed manifests until the Commission authorizes their disposition at transfer; and

(5) Notify the shipper (i.e., the generator, the collector, or processor) and the Director of the nearest Commission Inspection and Enforcement Regional Office listed in Appendix D of this part when a shipment has not arrived within 60 days after the advance manifest was received.

(h) Late or missing shipments must:

(1) Be investigated by the shipper if the shipper has not received notification of receipt within 20 days after transfer; and

(2) Be traced and reported. The investigation shall include tracing the shipment and filing a report with the nearest Commission Inspection and Enforcement Regional Office listed in Appendix D of this part. Each licensee who conducts a trace investigation shall file a written report with the nearest Commission's Regional office within 2 weeks of completion of the investigation.

15. In § 20.401, paragraphs (b) and (c)(3) are revised to read as follows:

§ 20.401 Records of surveys, radiation monitoring, and disposal.

* * * * *

(b) Each licensee shall maintain records in the same units used is this part, showing the results of surveys required by § 20.301(b), monitoring required by §§ 20.205(b) and 20.205(c) and disposals made under §§ 20.302, 20.303, deleted § 20.304,[1] and Part 61 of this chapter.

(c) * * *

(3) Records of disposal of licensed materials made pursuant to §§ 20.302, 20.303, deleted § 20.304 [1]; and Part 61 of this chapter are to be maintained until the Commission authorizes their disposition.

* * * * *

16. Section 20.408 is amended by adding a new paragraph (a)(5) to read as follows:

§ 20.408 Reports of personnel monitoring on termination of employment or work.

(a) * * *

(5) Receive radioactive waste from other persons for disposal under part 61 of this chapter.

* * * * *

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

§ 21.2 [Amended]

17. Section 21.2 is amended by inserting "61", after "40, 60," in the third line, and after "50, 60" in the final line.

§ 21.3 [Amended]

18. In § 21.3, paragraphs (a)(3), (a) (a–1)(1), (a) (a–1)(2), and (k) are amended by adding "61," after "50, 60."

§ 21.21 [Amended]

19. Section 21.21 is amended by adding "61," after "50, 60," in paragraphs (b)(1)(i) and (b)(1)(ii).

PARTS 30—RULES OF GENERAL APPLICABILITY TO LICENSING OF BYPRODUCT MATERIAL

20. Section 30.11(c) is revised to read as follows:

§ 30.11 Specific exemptions.

* * * * *

(c) Except as specifically provided in Part 61 of this Chapter, any licensee is exempt from the requirements of this part to the exent that its activities are subject to the requirements of Parts 60 and 61 of this chapter.

21. In § 30.32, paragraph (f) is amended to read as follows:

§ 30.32 Application for specific licenses.

* * * * *

(f) An application for a license for the conduct of any activity which the Commission determines will significantly affect the quality of the environment shall be filed at least 9 months to commencement of construction of the plant or facility in which the activity will be conducted and shall be accompanied by any Environmental Report required pursuant to Part 51 of this chapter.

22. In § 30.33, paragraph (a)(5) is revised to read as follows:

§ 30.33 General requirements for issuance of specific licenses.

(a) * * *

(5) In the case of an application for a license for the conduct of any activity which the Commission determines will significantly affect the quality of the environment, the Director of Nuclear Material Safety and Safeguards or his designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to Part 51 of this chapter, has concluded, after weighing the environmental, economic technical, and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to such conclusion shall be grounds for denial of a license to receive and possess byproduct material in such plant or facility. As used in this paragraph the term "commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

* * * * *

PART 40—LICENSING OF SOURCE MATERIAL

23. In § 40.14, paragraph (c) is revised to read as follows:

§ 40.14 Specific exemptions.

* * * * *

(c) Except as specifically provided in Part 61 of this chapter any licensee is exempt from the requirements of this part to the extent that its activities are subject to the requirements of Parts 60 and 61 of this chapter.

24. In § 40.31, paragraph (f) is revised to read as follows:

§ 40.31 Applications for specific licenses.

* * * * *

(f) An application for a license to possess and use source material for uranium milling, production of uranium hexafluoride, or for the conduct of any other activity which the Commission determines will significantly affect the quality of the environment shall be filed at least 9 months prior to commencement of construction of the plant or facility in which the activity will be conducted and shall be accompanied by any Environmental Report required pursuant to Part 51 of this chapter.

* * * * *

25. In § 40.32, paragraph (e) is revised to read as follows:

§ 40.32 General requirements for issuance of specific licenses.

* * * * *

(e) In the case of an application for a license to possess and use source and byproduct material for uranium milling, production of uranium hexafluoride, or for the conduct of any other activity which the Commission determines will significantly affect the quality of the environment, the Director of Nuclear Material Safety and Safeguards or his designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to Part 51 of this chapter, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to such a conclusion shall be grounds for denial of a license to possess and use source and byproduct material in such plant or facility. As used in this paragraph the term "commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

* * * * *

PART 51—LICENSING AND REGULATORY POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION

26. In § 51.5, paragraphs (a)(6) and (b)(4)(iii) are revised, paragraph (b)(6) is amended by inserting "61" following "50, 60,", and (d)(3) is amended by inserting "61" following "50, 60." The revised paragraphs read as follows:

§ 51.5 Actions requiring preparation of environmental impact statements, negative declarations, environmental impact appraisals; actions excluded.

(a) * * *

(6) Issuance of a license authorizing receipt and disposal of radioactive waste from other persons under Part 61 of this chapter;

* * * * *

(b) * * *

(4) * * *

(iii) Authorizing receipt and disposal of radioactive waste from other persons under Part 61 of this chapter.

* * * * *

§ 51.40 [Amended]

27. In § 51.40, paragraph (c) is amended by inserting "61" after "30, 40."

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

28. In § 70.14, paragraph (c) is amended to read as follows:

§ 70.14 Specific exemptions.

* * * * *

(c) Except as specifically provided in Part 61 of this chapter, any licensee is exempt from the requirements of the regulations in this part to the extent that its activities are subject to the requirements of Parts 60 and 61 of this chapter.

29. In § 70.21 paragraph (f) is revised to read as follows:

§ 70.21 Filing.

* * * * *

(f) An application for a license to possess and use special nuclear material for processing and fuel fabrication, scrap recovery or conversion of uranium hexafluoride, or for the conduct of any other activity which the Commission determines will significantly affect the quality of the environment shall be filed at least 9 months prior to commencement of constrution of the plant or facility in which the activity will be conducted, and shall be accompanied by an Environmental Report required under Part 51 * * * of this chapter.

* * * * *

30. In § 70.23 paragraph (a)(7) is revised to read as follows:

§ 70.23 Requirements for the approval of applications.

(a) * * *

(7) Where the proposed activity is processing and fuel fabrication, scrap recovery, conversion of uranium hexafluoride, or any other activity which the Commission determines will significantly affect the quality of the environment, the Director of Nuclear Material Safety and Safeguards or his designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to Part 51 of this chapter, has concluded, after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to such conclusions shall be grounds for denial to possess and use special nuclear material in such plant or facility. As used in this paragraph the term "commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

31. In § 73.1, paragraph (b)(1)(iii) is revised to read as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) * * *

(1) * * *

(iii) the physical protection of special nuclear material by any person who, pursuant to the regulations in parts 61 and 70 of this chapter, possesses or uses at any site or contiguous sites subject to the control by the licensee, formula quantities of strategic special nuclear material or special nuclear material of moderate strategic significance or special nuclear material of low strategic significance.

* * * * *

PART 170—FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED*

32. Section 170.2 is revised to read as follows:

§ 170.2 Scope.

Except for persons who apply for or hold the permits, licenses, or approvals exempted in § 170.11, the regulations in this part apply to a person who is an applicant for, or holder of, a specific byproduct material license issued pursuant to Parts 30 and 32–35 of this chapter, a specific source material license issued pursuant to Part 40 of this chapter, a specific materials license issued under Part 61 of this chapter, a specific special nuclear material license issued pursuant to Part 70 of this chapter, a specific approval of spent fuel casks and shipping containers issued pursuant to Part 71 of this chapter, a specific request for approval of sealed sources and devices containing byproduct material, source material, or special nuclear material, or a production or utilization facility construction permit and operating license issued pursuant to Part 50 of this chapter, to routine safety and safeguards inspections of a licensed person, to a person who applies for approval of a reference standardized design of a nuclear steam supply system or balance of plant, for review of a facility site prior to the submission of an application for a construction permit, for review of a standardized spent fuel facility design, and for a special project review, which the Commission completes or makes whether or not in conjunction with a license application on file or which may be filed.

Note.—Amendments to all parts are issued pursuant to citations of authority presently codified or, in the case of 10 CFR Part 61, as set out after the list of sections in the new Part 61.

Dated at Washington, D.C., this 21st day of July 1981.

For the U.S. Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

[FR Doc. 81-21734 Filed 7-23-81; 8:45 am]
BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Furnaces: Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliance Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On November 19, 1979, the Federal Trade Commission issued a Final Appliance Labeling Rule that requires the disclosure of energy efficiency or cost information on labels and in retail sales catalogs for seven categories of appliances, and mandates that these energy costs or energy efficiency ratings be based on standardized test procedures. The rule also requires a general disclosure on certain point-of-sale promotional materials of the availability of energy cost or energy efficiency rating information, and requires that any claims concerning energy consumption made in writing or in broadcast advertisements be based on results of the standardized test procedures.

The Federal Trade Commission now proposes to amend the rule to include labeling requirements for pulse combustion and condensing furnaces. The proposed amendments, which the Commission is required to consider under §§ 324(b)(1) and 336 of the Energy Policy and Conservation Act of 1975 (EPCA), as amended by the National Energy Conservation Policy Act of 1978, prescribe disclosure requirements and methods for determining energy efficiency information for pulse combustion and condensing furnaces. The proposed amendments are intended to insure that consumers will have pre-purchase information necessary to compare energy efficiency information relating to these and other competing climate control products covered by the regulation.

This notice sets out the proposed amendments, the procedures to be followed, a list of general questions and issues upon which the Commission particularly desires comment, an invitation for written comments, and instructions for prospective witnesses and other interested persons who desire to testify or otherwise participate in the proceedings. A Certificate of No Effect under the Regulatory Flexibility Act is appended.

DATES: Notification of intention to present views orally and copies of proposed testimony and exhibits, if any, on or before October 7, 1981; written comments on or before September 8, 1981. Public hearings commence October 19, 1981, in Washington, D.C.

ADDRESS: Submit written comments and exhibits, with five copies, where possible to Raymond L. Rhine, Presiding Officer for Furnaces Rulemaking, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: James Mills, 202–724–1491, or Lucerne D. Winfrey, 202–724–1453, attorneys, Bureau of Consumer Protection, Division of Energy and Product Information, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Energy Policy and Conservation Act requires the Federal Trade Commission to consider labeling rules for disclosure of annualized energy cost and alternate measures of energy consumption information for at least thirteen categories of appliances: (1) refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under Section 323 of EPCA, the Department of Energy (DOE) is responsible for developing test procedures that measure how much energy the appliances use. In addition, DOE is required to determine how much a consumer is likely to use each appliance on the average during a year, and the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule covering seven of the thirteen appliance categories: refrigerators and refrigerator-freezers; freezers; dishwashers; water heaters; clothes washers; room air conditioners; and furnaces. The Commission determined that clothes dryers, home heating equipment other than furnaces, television sets, kitchen ranges and ovens, and humidifiers and dehumidifiers should be exempted from the labeling requirements of the rule. Evidence received during the rulemaking indicated that labeling of these products would not be economically feasible or likely to assist consumers in making purchasing decisions (44 FR 66466, 66467–69).

On August 11, 1980, the Commission proposed an amendment which would require that central air conditioners, including heat pumps, be labeled (45 FR

53340). Hearings were conducted on the proposal on November 12 and 13, 1980, in Washington, D.C. The record in that proceeding was closed on December 22, 1980. The report of the staff to the Commission will be made public in February, 1981.

On September 19, 1980, DOE amended the test procedure for furnaces by extending its provisions to provide coverage for two products that had not previously been included: pulse combustion furnaces and condensing furnaces. (45 FR 62417). The amendment proceeding announced here will consider the appropriateness of labeling requirements for those products, including the issue of whether labeling of pulse combustion and condensing furnaces would be economically feasible or likely to assist consumers in making purchasing decisions.

The proposed amendments require pulse combustion and condensing furnaces to carry energy labels. The labels direct consumers to energy fact sheets for these appliances which disclose their energy efficiency rating, a range of ratings of comparable models, and regional annual cost figures.

Interested persons are invited to comment on any of the proposed amendments, any of the issues listed after the proposed amendments in Section C, and on any other issue of fact, law, or policy that may have some bearing on the proposed amendments.

Notwithstanding this notice of further rulemaking, the previously promulgated Appliance Labeling Rule, which covers refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners and furnaces, other than pulse combustion and condensing furnaces, remains in effect.

Section A. Proposed Amendments

In consideration of the foregoing, the Commission proposes the following amendments to the Appliance Labeling Rule, pursuant to § 324 (42 U.S.C. 6294) of the Energy Policy and Conservation act (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619), and to § 553 of Subchapter II, Chapter 5, title 5 of the U.S. Code (Administrative Procedure). the proposed amendments appear in the following provisions of the rule:

Section 305.3(g)
Section 305.4(e)(2)
Section 305.4(e)(3)
Section 305.8
Section 305.18

This would amend Title 16, Chapter 1 by adding to Subchapter C, Part 305—Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act—provisions covering pulse combustion and condensing furnaces. The proposed amendments are as follows:

1. Section 305.3, which describes the products covered by the rule, is amended by revising the definition of "furnace" to read as follows:

§ 305.3 Description of covered products to which this part applies.

* * * * *

(g) "Furnace" means a device, utilizing only single-phase electric current or millivoltage DC current in conjunction with either natural gas, propane, or home heating oil, which is designed to be the principal heating source for the living space of a residence and which is not contained within the same cabinet with a central air conditioner, whose rated cooling capacity is above 65,000 Btu's per hour. Every furnace is either an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler. The heat input rate of a furnace is less than 300,000 Btu's per hour for electric boilers and low pressure steam or hot water boilers, and is less than 225,000 Btu's per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces.

§ 305.4 [Amended]

2. Section 305.4(e)(2), which excludes products manufactured prior to the effective date of the rule, is amended by adding the following sentence at the end: "* * * any pulse combustion or condensing furnace if its manufacture was completed prior to [the effective date of this amendment]."

3. Section 305.4(e)(3), which sets the effective date of the rule with respect to catalogs, is amended to include pulse combustion and condensing furnaces.

§ 305.8 [Amended]

4. Section 305.8, which sets the requirements for the submission of data, is amended to provide for the initial submission of data two months after the publication of the final, amended rule for pulse combustion and condensing furnaces.

§ 305.18 [Amended]

5. Section 305.18 which sets the effective date of the rule, is amended by adding paragraph (j), as follows:

* * * * *

(j) All requirements pertaining to pulse combustion and condensing furnaces take effect not later than three months after publication of the amended rule in final form.

Section B. Invitation to Comment

All interested persons are hereby notified that they may submit to Raymond L. Rhine, Presiding Officer for Furnaces Rulemaking, Federal Trade Commission, Washington, D.C. 20580, data views or arguments on any issue of fact, law, or policy that may have some bearing upon the proposed amendment to the rule. Such written comments will be accepted until no later than September 8, 1981. To assure prompt consideration, each comment should be identified both on the document and on the envelope as "Furnace Rulemaking Comment" and furnished, when possible, in five copies.

Section C. General Questions and Issues

While interested persons are invited to address any questions of fact, law, or policy that they feel may have bearing upon the proposed amendments, listed below are several general questions and issues of fact bearing upon certain aspects of the proposed amendments concerning which the Commission particularly desires comments, orally or in writing, by persons concerned with and participating in this proceeding:

1. Are the requirements for additional information prescribed in the final rule applicable to and appropriate for pulse combustion and condensing furnaces? Is there a need for additional point-of-sale information for pulse combustion and condensing furnaces, beyond that already required by the final rule, that would provide suggestions for energy-efficient use of these products? If so, what information should be included?

During the development of the original labeling proposal, the Commission investigated the current availability of energy saving suggestions. With respect to pulse combustion and condensing furnaces, the Commission is interested in the following:

a. What energy saving suggestions, if any, are currently supplied by manufacturers?

b. Are any energy saving suggestions being made that are misleading, incomplete, or otherwise inappropriate?

c. Do consumers understand and use the suggestions currently available?

2. The Commission is interested in receiving comments concerning whether this rule is likely to have a significant adverse economic impact on small businesses. If so, how can the proposed rule be modified to minimize its economic impact, while still meeting the purposes outlined by Congress in EPCA?

3. Section 324(a)(2)(B) of EPCA states that the Commission need not prescribe a labeling rule if the lebeling "is not technologically or economically feasible or is not likely to assist consumers in making purchase decisions."

Do pulse combustion and condensing furnaces fall within these exceptions? If so, why?

Section D. Public Hearings

Public hearings on the proposed rule will be held commencing on October 19, 1981, at 10 a.m. in Room 332 of the Federal Trade Commission, Pennsylvania Avenue at Sixth Street, N.W., Washington, D.C. Persons desiring to present their views orally at these hearings should so advise Raymond L. Rhine, Presiding Officer for Furnaces Rulemaking, Federal Trade Commission, Washington, D.C. 20580 no later than October 7, 1981, and comply with the instructions in Section F of this notice.

Section E. Motions or Petitions

Any motions or petitions in conection with this proceeding must be filed with Raymond L. Rhine, Presiding Officer for Furnaces Rulemaking, who is responsible for the orderly conduct of the proceeding and who shall have all powers necessary to that end, including the authority to rule on all motions or petitions filed.

Applications for review of a ruling will not be entertained by the Commission prior to its review of the record unless the Presiding Officer certifies in writing to the Commission that a ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an intermediate review of the ruling may materially advance the ultimate termination of the proceeding or that subsequent review will be as inadequate remedy.

Section F. Instruction to Witnesses

1. Advance notice. The Commission invites any person who has an interest in the proposed rulemaking issued today, or who is a representative of a group or class of persons that has an interest, to make an oral presentation. Such a request should be directed to the Presiding Officer identified above and must be received no later than October 7, 1981. Witnesses are also required to submit a written statement that can be entered into the the record as submitted no later than October 7, 1981.

It will not be necessary to repeat this statement at the hearing. Submission of a written statement enables the witness to appear at the hearing, to answer questions posed by only the staff with regard to the written statement, and to deliver a short summary or the most important aspects of that statement within time limits that are established by the Presiding Officer. As a general rule, oral summaries should not exceed ten minutes. There will be no opportunity for interested persons to cross-examine witnesses. However, the Presiding Officer will make provisions for accepting written questions from the floor regarding issues raised during testimony.

2. Use of exhibits. Use of exhibits during oral testimony is encouraged, especially when they are to be used to help clarify technical or complex matters. If you plan to offer documents as exhibits, file them as soon as possible during the general comment period, but no later than October 7, 1981. Mark each of the documents with your name, and number them in sequence, e.g., Jones Exhibit 1. The Presiding Officer has the power to refuse to accept for the public record any hearing exhibits that are not furnished by the deadline.

3. Expert witnesses. If you are going to testify as an expert witness, you must attach to your statement your *curriculum vitae*, biographical sketch, resume or summary of your professional background and a bibliography of your publications. It would be helpful if you would also include documentation for the opinions and conclusions you express by footnotes to your statements or in separate exhibits. If your testimony is based or chiefly concerned with one or two major scientific works, copies should be furnished. The remaining citations to other works can be accomplished by using footnotes in your statement referring to those works.

4. Results of surveys and other research studies. If, in your testimony, you will present the results of a survey or other research study, as distinguished from simple references to previously published studies conducted by others, you must also present, as an exhibit or exhibits in compliance with paragraph 2 above, the following:

a. A complete report of the survey or other research study and the information and documents listed in (b) through (e) below if they are not included in that report.

b. A description of the sampling procedures and selection process, including the number of persons contacted, the number of interviews completed, and the number of persons who refused to participate in the survey.

c. Copies of all completed questionnaires or interview reports used in conducting the survey or study if respondents were permitted to answer questions in words of their choice rather than to select an answer from one or more answers printed on the questionnaire or suggested by the interviewer.

d. A description of the methodology used in conducting the survey or other research study including the selection of instructions to interviewers, introductory remarks by interviewers to respondents and a sample questionnaire or other data collection instrument.

e. A description of the statistical procedures used to analyze the data and all data tables that underlie the results reported.

Other interested persons may wish to examine the questionnaires, data collection forms and any other underlying data not offered as exhibits and which serve as a basis for your testimony. This information, along with punch cards or computer tapes that were used to conduct analyses should be made available (with appropriate explanatory data) upon request of the Presiding Officer. The Presiding Officer will then be in a position to permit their use by other interested persons or their counsel.

5. Identification, number of copies and inspection. To assure prompt consideration, all materials, including written statements, filed by prospective witnesses pursuant to the instructions contained in paragraphs 1–4 of this section should be identified both on the document and on the envelope as "Pulse Combustion and Condensing Furnaces Statement" ("and Exhibits," if appropriate), and submitted in five copies, when feasible and not burdensome, not later than October 7, 1981.

Copies of all materials filed by witnesses will be made available for examination in Room 130, Public Reference Room, Federal Trade Commission, Pennsylvania Avenue at Sixth Street, N.W., Washington, D.C. Binder number 209–18–14 should be requested in order that all materials submitted in this rulemaking may be examined.

6. Reason for requirements. The foregoing requirements are necessary to permit us to schedule the time for your appearances and that of other witnesses in an orderly manner. The Commission staff must have your expected testimony and supporting documents available for study before the hearing to prepare appropriate questions. Also, such data should be of assistance to interested persons in the preparation of the filing of contradictory statements (rebuttal).

The deadlines established by this notice will not be extended and hearing dates will not be postponed unless

hardship in participating can be demonstrated.

Section G. Post-Hearing Procedures

Interested persons will be afforded 20 days after the close of the hearings to file rebuttal submissions, which must be based only upon identified, properly cited matters already in the record. The Presiding Officer will reject all submissions that are essentially additional written comments, rather than rebuttal. The 20-day rebuttal period will commence when the final transcript of the hearings is placed on the public record by the Presiding Officer.

After the close of the rebuttal period, staff will analyze the evidence on the record and shall prepare and submit a recommendation for the final rule which will be placed on the public record for 30 days, during which time interested persons will be afforded the opportunity to submit comments for consideration by the Commission in reaching a decision on this rule. Comments will be submitted to James Mills, or Lucerne D. Winfrey, Attorneys, Federal Trade Commission, 414 11th Street N.W., Washington, D.C. 20580. To assure prompt consideration, each comment should be identified both on the document and the envelope as "Pulse Combustion and Condensing Furnaces Statement" and furnished, when possible, in five copies.

Section H. Compensation for Representation in Rulemaking Proceeding

Funds may be available for reimbursement of public participation costs incurred in this proceeding to those who satisfy the requirements of § 1.17 of the Commission's rules. For further information, contact Bonnie Naradzay, Special Assistant for Public Participation Office of the General Counsel, Federal Trade Commission, Pennsylvania Avenue at Sixth Street, N.W., Washington, D.C. 20580, 202–375–0258.

By direction of the Commission.

Carol M. Thomas,

Secretary.

Certificate of No Effect Under the Regulatory Flexibility Act

This is to certify that the Commission has concluded, after conducting a review and analysis of the manufacturing, distributing and retailing of pulse combustion and condensing furnaces, that the amendments proposed today will not, if promulgated, have a significant economic impact on a substantial number of small entities, within the meaning of The Regulatory Flexibility Act (Pub. L. 96–354, Sept. 19, 1980, 94 Stat. 1164). If these proposed amendments to the Commission's Appliance Labeling Rule are finalized, manufacturers of pulse combustion and condensing furnaces will have to test them in accordance with the Department of Energy (DOE) furnace test procedures. Using the test results, they will have to produce fact sheets showing required energy efficiency information. They will have to provide these fact sheets, together with labels on the furnaces directing consumers to the fact sheets, with each furnace they produce. Distributors must pass on the fact sheets and retailers must make them available to customers. Distributors and retailers must not deface or remove either the labels or the fact sheets. Failure to meet the above obligations could result in penalties of $100 per day for each violation.

At the manufacturing level, there appear to be only three entities that are presently affected or that may be affected in the foreseeable future. Since each of these entities employs more than 500 employees, they are not "small entities" as that term is defined in § 601 of The Regulatory Flexibility Act and in the regulations of the Small Business Administration found in 13 CFR 121.[1]

The Commission has concluded that, with respect to distributors and retailers, the amendment proposed today will not, if promulgated, have a significant economic impact, because the proposed amendment will impose no significant additional obligations or penalties. It appears that the burden of this regulation will be minimal. Basically, distributors and retailers must pass on the fact sheets provided by manufacturers and show them to consumers, and must not deface the labels or fact sheets. Further, since the proposed amendments would simply require the inclusion of two more products under an already existing rule, the only impact upon distributors and retailers should be that when they sell pulse combustion or condensing furnaces, they must show consumers the same label and fact sheet as they must show now with conventional types of boilers and furnaces. There appears to be no additional burden beyond this on distributors or retailers. Since the rule requires that manufacturers prepare and provide the labels and fact sheets, the direct effect of the proposal upon distributors and retailers should be minimal. The proposal, if promulgated, would simply result in pulse combustion and condensing furnaces being treated the same as conventional furnaces. Thus, sales of conventional furnaces should be unaffected, and, therefore, the indirect effect of the proposal will also be minimal. Therefore, the Commission has concluded, based on the information presently within its possession, that these added duties and liabilities will not have a significant economic impact on such distributors and retailers.

In order that manufacturers, distributors and retailers of pulse combustion and condensing furnaces be apprised of their potential obligations and liabilities under this proposed amendment, the Commission is mailing copies of today's notice to trade associations whose memberships consist of affected manufacturers and distributors, who, in turn, have as their customers other affected distributors and retailers. Additionally, the Commission has included a question in Section C of today's notice soliciting the public's comment on the issue of whether the proposed amendment will, in fact, have a significant economic impact on a substantial number of small entities.

By direction of the Commission.

David A. Clanton,

Acting Chairman.

[FR Doc. 81-21802 Filed 7-23-81; 8:45 am]

BILLING CODE 6750-01-M

[1] None of these companies falls within the definition of a small business as set forth in 13 CFR 121.3–10 and Schedule A at the end of Part 121. In order to be classified as a small business, a manufacturer of products in this category must not, together with its affiliates, employ more than 500 people. All of these companies, when considered with their affiliates, employ considerably more than that number.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–013]

Hazardous Materials; Extension of Comment Period

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period for written responses to the questions OSHA presented in the advance notice of proposed rulemaking: "Hazardous Materials: Request for Comments" (46 FR 7692, January 23, 1981).

DATES: Written responses to the notice must be submitted on or before February 1, 1982.

ADDRESS: The written information should be submitted, in quadruplicate, to the Docket Officer, Docket S–013 Room S6212, U.S. Department of Labor, Occupational Safety and Health Adminstration, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523–7894.

FOR FURTHER INFORMATION CONTACT: Mr. Glen E. Gardner or Ms. Joanne E. Slattery, Directorate of Safety Standards Programs, Office of Fire Protection Engineering and Systems Safety Standards, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3463, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523–7225.

SUPPLEMENTARY INFORMATION: On January 23, 1981, OSHA published in the **Federal Register** (46 FR 7692) a notice, "Hazardous Materials; Request for

Comments," regarding the revision of safety standards concerning hazardous materials. In the notice, OSHA requested written responses to many general and special issues pertaining to hazardous materials. The written responses were to have been received by July 30, 1981.

OSHA has received several requests to extend the comment period. In order to ensure that interested parties have sufficient time to compile data and prepare responses to the issues raised in the notice, OSHA has decided to extend the written comments period to February 1, 1982.

(Sec. 6, 84 Stat. 1593 (29 U.S.C. 655), 29 CFR Part 1911; Secretary of Labor's Order No. 8–76 (41 FR 25059))

Signed at Washington, D.C., this 14th day of July 1981.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 81–21735 Filed 7–23–81; 8:45 am]

BILLING CODE 4510–26–M

Notices

Federal Register
Vol. 46, No. 142
Friday, July 24, 1981

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Importation of Certain Animals; Harry S. Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of deadline for the receipt of applications for special authorization and schedule of fees for importation of cattle from Europe through the Harry S. Truman Animal Import Center.

SUMMARY: This document establishes a specific date for receipt of applications for special authorization to be drawn on a lottery basis for the allotment of quarantine space for the next group of cattle to be imported through the Harry S. Truman Animal Import Center (HSTAIC). It also lists the geographic area from which cattle will be considered for importation and the schedule of fees for importation of such cattle. This action is being taken to notify potential applicants of the lottery and fee schedule in accordance with the regulations.

DATES: Deadline for Receipt of Applications: September 17, 1981. Date and Time of Drawing: September 22, 1981, 9 a.m.

PLACE OF DRAWING: Room 643A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, USDA, APHIS, VS, Federal Building, Room 821, Hyattsville, MD 20782, 301–436–8170.

SUPPLEMENTARY INFORMATION: Procedures are established in section 92.41 of Title 9, Code of Federal Regulations (9 CFR 92.41), concerning the allocation of space at the Harry S. Truman Animal Import Center (HSTAIC). These procedures include the holding of a drawing to determine from submitted applications which interested persons will have a right to qualify animals to enter the United States through HSTAIC. HSTAIC is intended to process animals from countries interested persons will have a right to qualify animals to enter the United States through HSTAIC. HSTAIC is intended to process animals from countries affected with exotic diseases and not otherwise eligible for importation into the United States.

The present regulations require that 60 days prior notice be provided in the **Federal Register** of the date, time, and place of the drawing, and the geographic areas from which animals will be considered for importation. (9 CFR 92.41(a)(1)). The Department anticipates that cattle should be able to enter HSTAIC for the next importation on or about December 30, 1981. The drawing is scheduled for September 22, 1981, commencing at 9 a.m. in Room 643A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

This importation will be for cattle from Europe, if there is sufficient interest for such an importation.

Each applicant shall complete an application for importing animals through the HSTAIC which shall be received by Veterinary Services at least 5 days prior to the date of the drawing. Application forms may be obtained upon request from and completed applications should be sent to Import-Export Animals and Products Staff, Veterinary Services, APHIS, U.S. Department of Agriculture, 6505 Belcrest Road, Room 815, Hyattsville, MD 20782.

Each application shall be accompanied by a certified check or money order payable to the United States Department of Agriculture, Animal and Plant Health Inspection Service, in the amount of one thousand dollars ($1,000), for each animal for which special authorization is requested on the application. In the event the applicant does not receive special authorization for animals for which he has applied, the amount deposited with the application for each animal not so authorized will be returned. If the applicant receives special authorization, the deposited amount shall be applied against the total cost of importation of each animal.

All applicants, or their designated legal agents or representatives, shall be required to appear in person at the drawing. Such designated legal agent or representative shall have a notarized statement of authority signed by the applicant. On the day of the drawing, the applicants selected or their legal representatives shall be required to execute a cooperative agreement and pay the required fee in accordance with the agreement.

Under the present regulations, if the total number of animals for which special authorizations are requested is not at least 50, there shall not be a lottery or importation and the deposits shall be refunded to the applicants.

It should be noted that in this issue of the **Federal Register** the Department has published a notice of proposed rulemaking which if adopted would reduce the period of quarantine from five to three months. The schedule of fees published in this notice is based upon the reduced quarantine period in the proposal. This schedule of fees, set forth below, will, therefore, only be used if the proposed rule reducing the quarantine period is adopted. If it is not adopted, the fee schedule published in the October 14, 1980 issue of the **Federal Register** (45 FR 67643) will be used.

The notice of proposed rulemaking is to be published for a 30-day comment period. Any change in the present procedure, if adopted, would be in effect on or about September 22, 1981, and applicable to the next importation.

The fee schedule is graduated depending on the number of animals for which special authorization is granted to enter the HSTAIC. The fees would be as follows:

Rates for Importation of Animals From Europe Through HSTAIC

No. of cattle	Fixed cost per head	Variable cost per head	Total cost per head [1]
50 to 55	$6,034	$1,323	$7,357
56 to 60	5,626	1,323	6,949
61 to 65	5,281	1,323	6,604
66 to 70	4,985	1,323	6,308
71 to 75	4,729	1,323	6,052
76 to 80	4,505	1,323	5,828
81 to 85	4,307	1,323	5,630
86 to 90	4,131	1,323	5,454
91 to 95	3,974	1,323	5,297
96 to 100	3,832	1,323	5,155
101 to 105	3,704	1,323	5,027
106 to 110	3,588	1,323	4,911
111 to 115	3,481	1,323	4,804
116 to 120	3,384	1,323	4,707
121 to 125	3,294	1,323	4,617
126 to 130	3,211	1,323	4,534
131 to 135	3,135	1,323	4,458
136 to 140	3,064	1,323	4,387
141 to 145	2,997	1,323	4,320
146 to 150	2,936	1,323	4,259

Rates for Importation of Animals From Europe Through HSTAIC—Continued

No. of cattle	Fixed cost per head	Variable cost per head	Total cost per head [1]
151 to 155	2,876	1,323	4,199
156 to 160	2,820	1,323	4,143
161 to 165	2,767	1,323	4,090
166 to 170	2,718	1,323	4,041
171 to 175	2,671	1,323	3,994
176 to 180	2,627	1,323	3,950
181 to 185	2,585	1,323	3,908
186 to 190	2,546	1,323	3,869
191 to 195	2,508	1,323	3,831
196 to 200	2,473	1,323	3,796
201 to 205	2,448	1,323	3,771
206 to 210	2,424	1,323	3,747
211 to 215	2,402	1,323	3,725
216 to 220	2,380	1,323	3,703
221 to 225	2,361	1,323	3,684
226 to 230	2,340	1,323	3,663
231 to 235	2,322	1,323	3,645
236 to 240	2,304	1,323	3,627
241 to 245	2,286	1,323	3,609
246 to 250	2,270	1,323	3,593
251 to 255	2,255	1,323	3,578
256 to 260	2,241	1,323	3,564
261 to 265	2,228	1,323	3,551
266 to 270	2,215	1,323	3,538
271 to 275	2,203	1,323	3,526
276 to 280	2,190	1,323	3,513
281 to 285	2,179	1,323	3,502
286 to 290	2,168	1,323	3,491
291 to 295	2,157	1,323	3,480
296 to 300	2,146	1,323	3,469
301 to 305	2,130	1,323	3,453
306 to 310	2,114	1,323	3,437
311 to 315	2,099	1,323	3,422
316 to 320	2,084	1,323	3,407
321 to 325	2,069	1,323	3,392
326 to 330	2,055	1,323	3,378
331 to 335	2,042	1,323	3,365
336 to 340	2,028	1,323	3,351
341 to 345	2,016	1,323	3,339
346 to 350	2,003	1,323	3,326
351 to 355	1,995	1,323	3,318
356 to 360	1,987	1,323	3,310
361 to 365	1,979	1,323	3,302
366 to 370	1,972	1,323	3,295
371 to 375	1,965	1,323	3,288
376 to 380	1,957	1,323	3,280
381 to 385	1,951	1,323	3,274
386 to 390	1,944	1,323	3,267
391 to 395	1,937	1,323	3,260
396 to 400	1,931	1,323	3,254

[1] Includes feed, bedding, supplies and 1 series of test @ HST per animal and 2 series of tests, and 2 VIA tests per animal in Europe. Each additional series of tests will be billed separately @ $293 per series and each additional VIA test @ $27 per test.

Dated: July 20, 1981.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 81-21698 Filed 7-23-81; 8:45 am]

BILLING CODE 3410-34-M

Rural Electrification Administration

Colorado-Ute Electric Association, Inc.; Finding of No Significant Impact

Notice is hereby given that the Rural Electrification Administration (REA) has prepared a Finding of No Significant Impact (FONSI) which concludes that there is no need for REA to prepare an environmental impact statement in connection with the proposed Rifle Substation expansion by Colorado-Ute Electric Association, Inc., (Colorado-Ute) of Montrose, Colorado.

The existing Rifle Substation located in Garfield County south of the City of Rifle will be expanded to provide terminal facilities for the Craig-Rifle 345 kV transmission line and other future lines. The expansion will involve grading and site preparation of 4 hectares (10 acres) of land adjacent to the substation.

Threatened and endangered species, important farmlands, known cultural resources, wetlands, floodplains and other potential impacts of the project are adequately considered in REA's Environmental Assessment.

Various alternatives to the proposed project were reviewed by Colorado-Ute and REA. The alternatives included no action and importing fill material from another area.

REA's independent evaluation of the proposed project concludes that the Rifle Substation expansion does not represent a major Federal action that will significantly affect the quality of the human environment.

Based on this independent evaluation, REA's Environmental Assessment and a review of Colorado-Ute's Borrower's Environmental Report, a FONSI was reached in accordance with REA Bulletin 20-21:320-21, Part 1.

Copies of REA's FONSI and supporting documents may be reviewed at or obtained from the office of the Director, Power Supply Division, Room 5168, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, and at the office of Colorado-Ute Electric Association, Inc., 845 South Townsend Avenue, Montrose, Colorado 81401.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 16th day of July 1981.

Joe S. Zoller,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 81-21436 Filed 7-23-81; 8:45 am]

BILLING CODE 3410-15-M

Wheat Belt Public Power District, Sidney, Nebraska; No Significant Impact

Notice is hereby given that the Rural Electrification Administration (REA) has prepared a Finding of No Significant Impact in connection with the proposed financing assistance to Wheat Belt Public Power District, Sidney, Nebraska, for constructing 32 km (20 miles) of 115 kV transmission line and a new distribution substation.

The 115 kV transmission line will connect the existing Lynn Substation with the proposed Covalt Substation both in Morrill County, Nebraska. Wheat Belt has prepared a Borrower's Environmental Report concerning the proposed project. An Environmental Assessment was prepared by REA to evaluate the environmental impacts.

Alternatives to the proposed project included no action, underground construction, energy conservation, and constructing the transmission line from other existing substations in the area. After examining these alternatives, REA determined that the proposed 115 kV transmission line and associated substation is the best available practical alternative for providing power for present and projected electrical energy loads in the area.

REA's evaluation of the environmental effects concludes that the construction of this project does not represent a major Federal action significantly affecting the quality of the human environment. A Finding of No Significant Impact was reached by REA in accordance with REA Bulletin 20-21:320-21, Part I.

REA's Finding of No Significant Impact, the Environmental Assessment, and the Borrower's Environmental Report may be obtained from or reviewed at the office of the Director, Distribution Systems Division, Room 3304, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, (202) 447-4413, or at the office of Wheat Belt Public Power District, 2104 Illinois Street, Sidney, Nebraska 69162, (308) 254-5871.

The program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Administration Loans and Loan Guarantees.

Dated at Washington, D.C., this 16th day of July 1981.

Joe S. Zoller,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 81-21435 Filed 7-23-81; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Magoon Creek Natural Area R.C. & D. Measure, Mich.

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT:

Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

Notice. Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Magoon Creek Natural Area RC&D Measure, Manistee County, Michigan.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of practices for critical area treatment and public water-based fish and wildlife. The planned works of improvement include the following items: 15 acres of critical area planting, parking for 25 vehicles, 25 directional signs, vehicle barriers, 1 well and pump, 10 picnic tables, 5 grills, 5 trash receptacles, 2 vault toilets, 1 recreation trail, and 1 bronze plaque. Total construction cost is estimated to be $20,000; $10,000 RC&D funds, and $10,000 local funds. Landrights cost is estimated to be $253,000; $125,000 RC&D funds and $128,000 local funds.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner, The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

Dated: July 14, 1981.

Joseph W. Haas,

Deputy Chief for Natural Resource Projects.

(Catalog of Federal Domestic Assistance Program No. 10.901, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

[FR Doc. 81-21770 Filed 7-23-81; 8:45 am]

BILLING CODE 3410-16-M

Oregon County R-4 School Critical Area Treatment; R.C. & D. Measure, Mo.

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth G. McManus, State Conservationist, Soil Conservation Service, 555 Vandiver Drive, Columbia, Missouri 65201, telephone 314-442-2271, extension 3145.

Notice. Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notices that an environmental impact statement is not being prepared for the Oregon County R-4 School Critical Area Treatment RC&D Measure, Oregon County, Missouri.

The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Kenneth G. McManus, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment. The planned works of improvement include heavy use area protection, critical area planting, diversions, lined waterways, and underground outlets.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Kenneth G. McManus. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

Dated: July 15, 1981.

Joseph W. Haas,

Deputy Chief for Natural Resource Projects.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

[FR Doc. 81-21771 Filed 7-23-81; 8:45 am]

BILLING CODE 3410-16-M

Ritter Bay Public Water-Based Recreation R.C. & D. Measure, S.Dak.

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Robert D. Swenson, State Conservationist, Soil Conservation Service, 200 Fourth Street, S.W., Huron, South Dakota 57350, telephone 605-352-8651, ext. 333.

Notice Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Ritter Bay Public Water-Based Recreation RC&D Measure, Campbell County, South Dakota.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Robert D. Swenson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The planned works of improvement include: bank stabilization, parking lot, boat ramp, access road, picnic area, recreation trail, sanitary facilities, and tree plantings.

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Robert D. Swenson. A combined environmental assessment and finding of no significant impact has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the finding of no significant impact are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

Dated: July 14, 1981.

Joseph W. Haas,

Deputy Chief for Natural Resource Projects.

(Catalog of Federal Domestic Assistance Program No. 10.901, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

[FR Doc. 81-21772 Filed 7-23-81; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

California Advisory Committee; Agenda and Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 8:30 a.m. and will end at 5:00 p.m., on August 13, 1981 and will also convene at 9:00 a.m. and will end at 2:00 p.m., on August 14, 1981, at the State Capitol, Room 2170, 500 Capitol Mall, Sacramento, California 95814. The purpose of this meeting is to investigate the impact of reapportionment in California on the political participation of ethnic/racial minorities in the state.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. Maurice Mitchell, 260 Eucalyptus Hill Dr., Santa Barbara, California 93103, (303) 444-3541 or the Western Regional Office, 3660 Wilshire Boulevard, Suite 810, Los Angeles, California 90010, (213) 688-3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 20, 1981.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 81-21680 Filed 7-23-81; 8:45 am]

BILLING CODE 6335-01-M

Minnesota Advisory Committee; Agenda and Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 8:30 a.m. and will end at 5:00 p.m., on August 21, 1981, at Earle Brown Continuing Education Center, Rooms 135 A-C and 155, 1890 Buford Avenue, St. Paul, Minnesota 55108. The purpose of this meeting is to discuss recommendation of the report, *Police Practices in the Twin Cities.*

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mrs. Lupe Lopez, 2105 Stillwater, White Bear Lake, Minnesota 55101, (612) 416-1146, or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 20, 1981.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 81-21681 Filed 7-23-81; 8:45 am]

BILLING CODE 6325-01-M

Rhode Island Advisory Committee; Agenda and Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 7:30 p.m. and will end at 9:30 p.m., on August 12, 1981, at Rhode Island State House, Room 204, Providence, Rhode Island 20908. The purpose of this meeting is to discuss program planning and committee reports.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Ms. Miriam E. Satterfield, 54 Arbor Drive, Providence, Rhode Island 20908, (401) 277-6920 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110, (617) 223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 21, 1981.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 81-21678 Filed 7-23-81; 8:45 am]

BILLING CODE 6335-01-M

Wisconsin Advisory Committee; Agenda and Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 10:30a and will end at 12:00p, on August 11, 1981, at the Higher Education Board, 2nd Floor, 600 W. Walnut Street, Milwaukee, Wisconsin 53212. The purpose of this meeting is to discuss the Vocational Education Project.

Persons desiring additional information or planning a presentation to the committee, should contact the Chairperson, Mr. Herbert M. Hill, 2127 Van Hise Avenue, Madison, Wisconsin 53705, (608) 238-6647 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353-7371.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 21, 1981.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 81-21678 Filed 7-23-81; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Precipitated Barium Carbonate From the Federal Republic of Germany; Allowance of Security in Lieu of Estimated Duty Pending Early Determination of Antidumping Duty

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

ACTION: Notice of allowance of security in lieu of estimated duty pending early determination of antidumping duty.

SUMMARY: The Department of Commerce has determined that, on the basis of information received from one manufacturer of precipitated barium carbonate subject to an antidumping duty order, Kali-Chemie AG, the Department shall determine the foreign market value and United States price within 90 days of the date of publication of the order. The posting of bond or other security in lieu of the deposit of estimated dumping duties will be permitted for merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and before September 24, 1981, from this one manufacturer.

EFFECTIVE DATE: July 24, 1981.

FOR FURTHER INFORMATION CONTACT: Alain Letort or David R. Chapman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230 (202-377-1273).

SUPPLEMENTARY INFORMATION: On June 25, 1981, the Department of Commerce ("the Department") published in the **Federal Register** (46 FR 32864) an antidumping duty order relating to precipitated barium carbonate from the

Federal Republic of Germany. The Department announced in the notice that, pursuant to section 736 of the Tariff Act of 1930 ("the Tariff Act"), customs officers were to require, along with deposits of estimated normal customs duties on the merchandise, a deposit of estimated antidumping duties pending liquidation for all entries, or withdrawals from warehouse, for consumption.

On July 2, 1981, a manufacturer of the merchandise, Kali-Chemie AG ("Kali"), requested that the Department waive the deposit of estimated duties and make an early determination of duty. Section 736(c) of the Tariff Act provides that under certain conditions the Department may permit, for not more than 90 days after the date of the publication of an order, the posting of bond or other security in lieu of the deposit of estimated antidumping duties. Before granting such a waiver, we must be satisfied that, based upon the information presented, we will be able to determine, within 90 days after the date of the publication of the order, the foreign market value and the United States price for all barium carbonate manufactured by Kali entered, or withdrawn from warehouse, for consumption on or after the date of publication of the affirmative preliminary determination, under section 733(b) of the Tariff Act, and before the date of publication of the affirmative final determination by the International Trade Commission, under section 735(a) of the Tariff Act.

After reviewing the information submitted by Kali, the Department is satisfied that it will be able to determine foreign market value and United States price for all of the merchandise entered during the relevant time period. Accordingly, the Department is instructing the Customs Service to waive deposit of estimated duty and accept the posting of a bond or other security for all entries of precipitated barium carbonate manufactured by Kali entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. A deposit of estimated antidumping duty shall continue to be collected on entries of precipitated barium carbonate manufactured by any other West German manufacturer or producer, in accordance with the order. Interested parties may submit written comments within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 15 days of the date of publication. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish a notice in the **Federal Register** of the result of this determination of foreign market value and United States price before September 24, 1981 including the results of its analysis of any such comments or hearing.

This notice is published in accordance with section 736(c)(2)(A) of the Tariff Act (19 U.S.C. 1673e(c)(2)(A)).

Leonard M. Shambon,

Director, Office of Compliance, Import Administration.

July 21, 1981.

[FR Doc. 81-21661 Filed 7-23-81; 8:45 am]

BILLING CODE 3510-25-M

Strontium Nitrate From Italy; Allowance of Security in Lieu of Estimated Duty Pending Early Determination of Antidumping Duty

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

ACTION: Notice of allowance of society in lieu of estimated duty pending early determination of antidumping duty.

SUMMARY: The Department of Commerce has determined that, on the basis of information received from one manufacturer of strontium nitrate subject to an antidumping duty order, Societa Bario e Derivati, S.p.A., the Depatment shall determine the foreign market value and United States price within 90 days from the date of publication of the order. The posting of bond or other security in lieu of the deposit of estimated dumping duties will be permitted for merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and before September 24, 1981 from this one manufacturer.

EFFECTIVE DATE: July 24, 1981.

FOR FURTHER INFORMATION CONTACT: Michael Hudak or David R. Chapman, Office of Compliance, U.S. Department of Commerce Washington, D.C. 20230 (202-377-4697).

SUPPLEMENTARY INFORMATION: On June 25, 1981, the Department of Commerce ("the Department") published in the **Federal Register** (46 FR 32864) an antidumping duty order relating to strontium nitrate from Italy. The Department announced in the notice that, pursuant to section 736 of the Tariff Act of 1930 ("the Tariff Act"), Customs officers were to require, along with deposits of estimated normal customs duties on the merchandise, a deposit of estimated antidumping duties pending liquidation for all entries, or withdrawals from warehouse, for consumption.

On June 30, 1981, a manufacturer of the merchandise, Societa Bario e Dirivati, S.p.A. ("SABED"), requested that the Department waive the deposit of estimated duties and make an early determination of duty. Section 736(c) of the Tariff Act provides that under certain conditioins the Department may permit, for not more than 90 days after the date of publication of an order, the posting of bond or other security in lieu of the deposit of estimated antidumping dities. Before granting such a waiver, we must be satisfied that, based upon the information presented, we will be able to determine, within 90 days after the date of the publication of the order, the foreign market value and the United States price for all strontium nitrate manufactured by SABED entered, or withdrawn from warehouse, for consumptioin on or after the date of publication of the affirmative preliminary determination, under section 733(b) of the Tariff Act, and before the date of publication of the affirmative final determination by the International Trade Commission, under section 735(a) of the Tariff Act.

After reviewing the information submitted by SABED, the Department is satisfied that it will be able to determine foreign market value and United States price for all of the merchandise entered during the relevant time period. Accordingly, the Department is instructing the Customs Service to waive deposit of estimated duty and accept the posting of a bond or other security for all entries of strontium nitrate manufactured by SABED entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. A deposit of estimated antidumping duty shall continue to be collected on entries of strontium nitrate manufactured by any other Italian manufacturer or producer, in accordance with the order. Interested parties may submit written comments on or before August 24, 1981 and may request disclosure and/or a hearing on or before August 10, 1981. Any request for an adminstrative protective order must be made no later than July 29, 1981. The Department will publish a notice in the **Federal Register** of the result of this determination of foreign market value and United States price before September 24, 1981 including the results of its analysis of any such comments or hearing.

This notice is published in accordance with section 736(c)(2)(A) of the Tariff Act (19 U.S.C. 1673e(c)(2)(A)).

Leonard M. Shambon,

Director, Office of Compliance, Import Administration.

July 21, 1981.

[FR Doc. 81-21662 Filed 7-23-81; 8:45 am]

BILLING CODE 3510-25-M

Performance Review Board Membership

This notice announces the appointment by the Department of Commerce Undersecretary for International Trade, Lionel H. Olmer, of the Performance Review Board for ITA. The appointment of the board members is for one year from the date of this announcement. The purpose of the International Trade Administration PRB is to review performance appraisal ratings and performance actions for recommendations to the appointing authority as well as other related matters. The names and titles of the PRB members are:

International Trade Administration
- Bohdan Denysyk, Deputy Assistant Secretary, Export Administration
- Joseph F. Dennin, Deputy Assistant Secretary, Finance, Investment and Services
- G. Mishell George, Deputy Assistant Secretary, Export Development
- Ann Hughes, Deputy Assistant Secretary, Trade Agreements
- Richard L. McElheny, Deputy Assistant Secretary, Trade Development
- Paul T. O'Day, Deputy Assistant Secretary, Textiles and Apparel
- John B. Roose, Deputy to the Deputy Assistant Secretary, Export Promotion.

Minority Business Development Agency
- Herbert S. Becker, Director of Administration.

Dated: July 20, 1981.

James T. King, Jr.,

Personnel Officer, ITA.

[FR Doc. 81-21686 Filed 7-23-81; 8:45 am]

BILLING CODE 3510-25-M

Deadline for Filing Applications To Participate in the Allocation of the Export Quota for Unprocessed Western Red Cedar for Fiscal Year 1982

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Notice of deadline for filing export quota applications.

SUMMARY: This notice is a reminder for those eligible for western red cedar export quota allocations for FY 1982 that the deadline for filing applications is September 15, 1981. Applications received after that date will not be considered for a quota share for FY 1982. Application procedures are explained in this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Van Geem, Short Supply Division, Office of Export Administration, (202) 377-3984.

SUPPLEMENTARY INFORMATION: Section 7(i) of the Export Administration Act of 1979 (Pub. L. 96-72, 50 U.S.C. App. 2401 *et seq.*) requires validated licensing of exports of unprocessed western red cedar harvested from state or federal lands and establishes a quota of 5 MMBF (million board feet) scribner of such cedar which may be exported during the period October 1, 1981–September 30, 1982 (the last year of statutorily mandated quota program). By regulation published in the **Federal Register** on April 2, 1980, and revised in the **Federal Register** on September 9, 1980 (45 FR 59302), the Department established a validated licensing system for western red cedar, including a procedure for applying to participate in the allocation of the statutory quota for FY 1982.

Application Procedure

The deadline for submission of applications to participate in the allocation of the statutory quota for fiscal year 1982 is September 15, 1981. The documentation required to support such applications for quota shares in each of the four quota categories remains the same as specified in the regulations at 15 CFR 377.7.

To be considered, all new and revised applications for a share of the FY 1982 export quota must be physically received in the Short Supply Division, Office of Export Administration, no later than 5:00 p.m., EDST September 15, 1981.

Applicants under the Historical Exporter category who have already submitted documentation establishing their past exports need not reapply for a share of the quota for the FY 1982. Similarly, applicants under the Contract Harvester category who have already submitted affidavits including a statement as to the volume of cedar stumpage which they expect to harvest from state and federal lands during the fiscal year commencing October 1, 1981, need not reapply. However, applicants under the Contract Harvester category who have not submitted such information in affidavit format must do so on or before the required deadline (i.e., September 15, 1981) to be considered for a share of the export quota to be allocated for fiscal year 1982.

Applicants under the Inventory Owner category are required to submit new applications in order to be considered for a share of the export quota to be allocated for FY 1982. As provided in § 377.7(e)(2) of the Export Administration Regulations, such applications must be in affidavit format, and must state the quantity of unprocessed western red cedar harvested from state or federal lands which the applicant owned and held in inventory on October 1, 1979, and the quantity of this pre-October 1, 1979, cedar inventory which the applicant did not claim in his request for a share of the export quota in FY 1980 or in FY 1981 and which he still has and will have in owned inventory in October 1, 1981. Inventories claimed for a share of the FY 1980 or FY 1981 quotas which have not yet been exported may *not* be reclaimed for a share of the FY 1982 quota.

Persons seeking a share of the export quota on the basis of unique hardship or exceptions must submit new applications as provided in § 377.7(e)(4). Applicants under this category are advised to study carefully the unique hardship and exceptions provisions of the regulations (§ 377.3) before preparing their applications.

As provided in § 377.7(f)(3), exporters are reminded that in allocating the FY 1982 export quota, the Department will deduct from each quota recipient's preliminary quota allocation any exports which such person made during the period October 1, 1979–April 16, 1980 which were in excess of his FY 1980 and FY 1981 quota allocations. Amounts so deducted will be re-allocated among other persons receiving quota shares, thus assuring allocation of each fiscal year's entire statutory quota.

(Secs. 7, 15 and 21), Pub. L. 96-72, 50 U.S.C. App. 2401 et seq.; E.O. 12214, (45 FR 29783, May 6, 1980); Department Organization Order 10-3, (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Order 41-1 (45 FR 11862, February 22, 1980) and 41-4 (45 FR 65003, October 1, 1980)

Dated: July 21, 1981.

William V. Skidmore,

Director, Office of Export Administration.

[FR Doc. 81-21719 Filed 7-23-81; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Sea World, Inc.; Permit Modification Request

Notice is hereby given that Sea World, Incorporated, 1720 South Shores

Road, Mission Bay, San Diego, California 92109, has requested a modification to Public Display/Scientific Research Permit No. 252 issued on January 12, 1979 (44 FR 4004), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting to take an additional Atlantic bottlenose dolphin (*Tursiops truncatus*) as a replacement for an animal which died during capture operations. The animal will be taken by the means, in the area, and for the purposes set forth in the original permit application.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, on or before August 24, 1981. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above request are available for review in the following offices:

Assistant Administrator for Fisheries, 3300 Whitehaven Street, N.W., Washington, D.C.;

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: July 21, 1981.

R. B. Brumsted,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

FR [illegible]

BILLING CODE 3510-22-M

Office of the Secretary

Guidelines for Participation by U.S. Government Agencies, Employees, and Agents in International Standards-Related Activities; Public Comment Period

The purpose of the Interagency Committee on Standards Policy (ICSP), which is chaired by the Department of Commerce, is to facilitate the effective participation by the Federal Government in domestic and international standards activities and to promote the development of uniform policies among agencies participating in these activities. Twenty-four U.S. Government agencies are members of this Committee. The ICSP has drafted a set of Guidelines for participation by Federal agencies, employees, and agents in international standards-related activities. These Guidelines pertain to Federal participation in international organizations in which the U.S. Government is the official member body (as in the International Organization of Legal Metrology) and in which a domestic private sector organization is the official member body (as in the International Organization for Standardization where the U.S. member body is the American National Standards Institute).

In preparing these Guidelines, the ICSP recognized that the expansion of international cooperation in trade and defense emphasizes the need for effective government involvement in the development of acceptable international standards (including test methods and certification) and that limited U.S. Government resources which contribute to these efforts must be expended effectively and efficiently.

The Committee also recognized that the role and functions of the U.S. Government in international standards-related activities have not been clearly defined. Consequently, the interpretation of that role has varied among Federal agencies, the private sector, and other countries. As a result, there has been a growing need expressed for a set of guidelines. A number of other factors also prompted the preparation of these uniform Federal Guidelines, notably:

- The increasing tendency of governments to regulate or procure by 'reference to standards';
- The growing impact of standards on commerce; and
- Current international activity aimed at preventing technical barriers to trade, and corresponding heightened interest in the development of international standards and their subsequent national adoption.

In addition, the Committee took cognizance of two recent developments which gave further impetus to the development of Guidelines covering Federal participation in international standards-related activities. These are:

- Trade Agreements Act of 1979, Title IV—Technical Barriers to Trade (Standards), effective January 1, 1980. Section 413 of that Act deals specifically with representation of U.S. interests before international standards organizations. Regarding private international organizations, this section recognizes the role of U.S. private sector members of such organizations and grants the Secretaries of Commerce and Agriculture authority, under certain circumstances, to provide for adequate U.S. representation in those private international standards organizations through their U.S. member bodies. Regarding representation of U.S. interests by Federal agencies, Section 413(c) encourages cooperation among Federal agencies in the development of uniform positions, and encourages such Federal agencies to seek information from and to cooperate with domestic U.S. interests. Paragraph 2.3 of the international Standards Agreement itself calls upon parties (e.g., the U.S. Government) to "play a full part within the limits of their resources in the preparation by appropriate international standardizing bodies of international standards for products for which they have either adopted, or expect to adopt, technical regulations or standards."
- Office of Management and Budget Circular A–119, dated January 17, 1980, "Federal Participation in the Development and Use of Voluntary Standards". Section 6(b), Participation in Voluntary Standards Bodies, and the eight (8) provisions contained therein speak to and encourage Federal employee participation in voluntary standards-developing bodies which includes service on committees of international (non-governmental) standards bodies. Paragraph 7(b)(4) covers the development of unified Government positions on matters of paramount importance in those voluntary standards bodies.

The Guidelines are divided into two parts. Section 1 deals with U.S. Government participation in international standards-related organizations in which the U.S. Government is the official U.S. member body. Subsection 1A covers delegations accredited by the U.S. Department of State. Subsection 1B covers delegations which are not accredited by the U.S.

Department of State; Subsection 1B relies extensively on the procedures of the State Department and, with respect to the guidelines on voting, on the procedures of the American National Standards Institute. Section 2 deals with U.S. Government participation in international standards-related organizations in which the U.S. Government is not the official U.S. member-body.

It must be emphasized in promulgating these Guidelines, that the ICSP does not intend any interference in the lawful activities of Federal agencies, or private sector organizations, or that the Guidelines should become mandatory for Federal agencies.

The Interagency Committee on Standards Policy is aware that the private sector and other governmental interests may wish to express their views on these draft Guidelines. Accordingly, 75-day public comment period has been established ending October 7, 1981. Copies of the Guidelines are available in the Office of Product Standards Policy (Room 3876, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202–377–4148) and will be sent to any interested person upon request. Comments should be sent to the Chairman, Interagency Committee on Standards Policy, U.S. Department of Commerce, Room 3876, Washington, D.C. 20230.

Issued: July 21, 1981.

Robert B. Ellert,

Acting Assistant Secretary for Productivity, Technology and Innovation.

FR Doc. 81–21736 Filed 7–23–81; 8:45 am]

BILLING CODE 3510–17–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Increases in the Import Restraint Levels for Certain Cotton Products From Pakistan

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing the consultation levels for other woven fabrics, such as lawn or voile, among others, in Category 320; cotton dresses in Category 336; men's and boys' woven cotton shirts in Category 340; and cotton skirts in Category 342, produced or manufactured in Pakistan and exported during the eighteen-month period which began on January 1, 1981, as follows:

Category	Adjusted level
320	10,000,000 yds [1]
336	33,113 doz
340	70,833 doz
342	101,124 doz

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142) and May 5, 1981 (46 FR 25121).)

SUMMARY: Under the terms of the Bilateral Cotton Textile Agreement of January 4 and 9, 1978, as amended, between the Governments of the United States and Pakistan, agreement has been reached to increase the consultation levels for cotton textile products in Categories 320, 336, 340, and 342 during the agreement period which began on January 1, 1981 and extends through June 30, 1982.

EFFECTIVE DATE: July 20, 1981.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–5423).

SUPPLEMENTARY INFORMATION: On December 24, 1980 there was published in the **Federal Register** (45 FR 85140) a letter dated December 19, 1980 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton textile products, including Categories 320, 336, 340, and 342, produced or manufactured in Pakistan and exported to the United States during the eighteen-month period which began on January 1, 1981 and extends through June 30, 1982. In accordance with the terms of the bilateral agreement and at the request of the Government of Pakistan, the United States Government has agreed to increase the consultation levels for textile products in Categories 320, 336, 340, and 342. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the levels to the designated amounts.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 20, 1981.

Commissioner of Customs, Department of the Treasury,

Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1980 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain textile products, produced or manufactured in Pakistan.

Effective on July 20, 1981, you are directed to amend eighteen-month levels of restraint established in the directive of December 19, 1980 for Categories 320, 336, 340, and 342 to the following amounts:

Category	Amended 18-mo level of restraint
320	10,000,000 yds [1]
336	33,113 doz
340	70,833 doz
342	101,124 doz

The actions taken with respect to the Government of Pakistan and with respect to imports of cotton textile products from Pakistan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 81–21650 Filed 7–23–81; 8:45 am]

BILLING CODE 3510–25–M

Committee for the Implementation of Textile Agreements

Announcing Increases in the Import Restraint Level for Certain Wool Apparel Products From Malaysia

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing the level of restraint established for wool sweaters in Category 445/446, produced or manufactured in Malaysia and exported during the agreement year which began on January 1, 1981 from 17,102 dozen to 23,220 dozen by the application of carryforward and the restoration of 4,644 dozen of 1977 overshipments which are charged to the current year level.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506) December 24, 1980 (45 FR 85142) and May 5, 1981 (46 FR 25121)).

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement

of May 17 and June 18, 1978, as amended, between the Governments of the United States and Malaysia, provides, among other things, for the borrowing of designated percentages of yardage from the succeeding year's level (carryforward) with the amount used being deducted from the level in the succeeding year. At the request of the Government of Malaysia, carryforward in the amount of 1,474 dozen is being applied to the level of restraint for wool textile products in Category 445/446. Further, in consultations held July 17, 1981, agreement has been reached between the two governments to deduct overshipment charges in the amount of 4,644 dozen that are charged to the 1981 level. This amount will be charged in two equal increments to the levels for 1982 and 1983.

EFFECTIVE DATE: July 27, 1981.

FOR FURTHER INFORMATION CONTACT: Gordana Slijepcevic, International trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–5423).

SUPPLEMENTARY INFORMATION: On May 5, 1981, there was published in the **Federal Register** (45 FR 25120) a letter dated April 23, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, including Category 445/446, produced or manufactured in Malaysia and exported to the United States during the twelve-month period which began on January 1, 1981 and extends through December 31, 1981. In accordance with the terms of the bilateral agreement and at the request of the Government of Malaysia, the United States Government has agreed to increase the level of restraint for wool textile products in Category 445/446 to 23,220 dozen during the agreement year which began on January 1, 1981. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the level to the designated amount.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implemetation of Textile Agreements

July 21, 1981.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on April 23, 1981 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Malaysia.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilaterial Cotton, Wool and Man-Made Fiber Textile Agreement of May 17 and June 8, 1978, as amended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on July 27, 1981, and for the twelve-month period beginning on January 1, 1981, and extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 445/446, produced or manufactured in Malaysia, in excess of 23,220 dozen.[1]

The actions taken with respect to the Government of Malaysia and with respect to imports of wool texitle products from Malaysia have been determiend by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 81-21739 Filed 7-23-81; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1981; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1981 a commodity to be produced by and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: July 24, 1981.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557–1145.

SUPPLEMENTARY INFORMATION: On May 29, 1981, April 17, 1981, and April 24, 1981, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (46 F.R. 28893, 46 F.R. 22420, and 46 F.R. 23281) of proposed additions to Procurement List 1981, November 12, 1980 (45 F.R. 74836).

After consideration of the relevant matter presented, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following commodity and services are hereby added to Procurement List 1981:

Class 6515

Kit, Suture Removal
6515–00–690–6911

SIC 7349

Janitorial/Custodial
Social Security Administration District Office Building
686 Nye Avenue
Irvington, New Jersey
Social Security Administration District Office Building
396 Bloomfield Avenue
Montclair, New Jersey
Social Security Administration District Office Building
22 Morris Street
Hackensack, New Jersey

C. W. Fletcher,

Executive Director.

[FR Doc. 81-21682 Filed 7-23-81; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1981; Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Deletions from procurement list.

SUMMARY: This action deletes from Procurement List 1981 services provided by workshops for the blind or other severely handicapped.

DATE: July 24, 1981.

ADDRESS: Committee for Purchase from the Blind and Other severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145

SUPPLEMENTARY INFORMATION: On May 22, 1981, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (46 FR 27988) of proposed deletions from Procurement List 1981, November 12, 1980 (45 FR 74836).

After consideration of the relevant matter presented, the Committee has

[1] The level of restraint has not been adjusted for any imports after December 31, 1980.

determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following services are hereby deleted from Procurement List 1981:

SIC 7641

Furniture Rehabilitation
Seattle, Washington, plus 30-mile radius
Tacoma-Auburn, Washington, plus 30-mile radius (including McChord Air Force Base and Fort Lewis)
Metal Furniture Rehabilitation
Bremerton, Washington, Plus 13-mile radius
Olympia, Washington, Plus 13-mile radius
Seattle, Washington, Plus 13-mile radius
Tacoma, Washington, plus 13-mile radius (including McChord Air Force Base and Fort Lewis)

C. W. Fletcher,

Executive Director.

[FR Doc. 81-21683 Filed 7-23-81; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1981; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1981 commmodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 26, 1981.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1981, November 12, 1980 (45 FR 74836):

Class 7510

Eraser, Mechanical Pencil
7510-00-307-7885

Class 7920

Towel, Machinery Wiping
7920-00-260-1279

Class 8455

Holder, Identification
8455-00-898-9730

SIC 7399

Currency Packaging Service
Bureau of Engraving and Printing
Washington, D.C.

C. W. Fletcher,

Executive Director.

[FR Doc. 81-21684 Filed 7-23-81; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1981; Proposed Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed deletions from procurement list.

SUMMARY: The Committee has received a proposal to delete from Procurement List 1981 commodities produced by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 26, 1981.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

It is proposed to delete the following commodities in the GSA Regions indicated from Procurement List 1981, November 12, 1980 (45 FR 74836):

Class 7530

Paper Set, Manifold and Carbon
7530-00-880-9154
(For GSA Regions 1, 2, 3, 5)
7530-00-401-6910
(For GSA Regions 1, 3, 5)
7530-01-072-2536
(For GSA Regions 1, 2, 3, 5)
7530-01-073-2536
(For GSA Regions 1, 2, 3, 5)
7530-01-072-2538
(For GSA Regions 1, 2, 3, 5)
7530-01-072-2539
(For GSA Regions 1, 2, 3, 5)
7530-00-205-0511
(For GSA Regions 1, 2, 3, 5)

C. W. Fletcher,

Executive Director.

[FR Doc. 81-21685 Filed 7-23-81; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem Travel and Transportation Allowance Committee, DoD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 104. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 104 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: July 16, 1981.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of changes in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 104

To the Heads of Executive Departments and Establishments

Subject: Table of Maximum per Diem Rates in Lieu of Subsistence for United States Government Civilian Officers and Employees for Official Travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and Possessions of the United States

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense August 17, 1966, "Executive Order 11294, August 4, 1966 Delegating Certain Authority of the

President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status," in which this Committee is directed to exercise the authority of the President (5 U.S.C. 5702(a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone, and possessions of the United States. When appropriate, and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 103 except in the case identified by an asterisk which rate is effective on the date of this Bulletin. The date of this Bulletin shall be the date the last signature is affixed hereto.

3. Each Department or Establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bullletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$12.60
Anaktuvuk Pass	140.00
Anchorage	72.00
Barrow	169.00
Bethel	93.00
College	90.00
Cordova	69.00
Deadhorse	94.00
Dillingham	103.00
Dutch Harbor	62.00
Eielson AFB	90.00
Elmendorf	72.00
Fairbanks	90.00
Ft. Richardson	72.00
Ft. Wainwright	90.00
Juneau	83.00
Ketchikan	82.00
Kodiak	102.00
Kotzebue	97.00
Murphy Dome	90.00
Noatak	97.00
Nome	102.00
Noorvik	97.00
Petersburg	82.00
Prudhoe Bay	94.00
Shemya AFB [1]	11.00
Shungnak	97.00
Sitka—Mt. Edgecombe	82.00
Skagway	82.00
Spruce Cape	102.00
Tanana	102.00
Valdez	85.00
Wainwright	79.00
Wrangell	82.00
All other localities	71.00
American Samoa	65.00
*Guam M.I.	67.00
Hawaii:	
Oahu	70.00
All other localities	60.00
Johnston Atoll [2]	15.50
Midway Islands [1]	12.60
Puerto Rico:	
Bayamon:	
12-16—5-15	102.00
5-16—12-15	75.00
Carolina:	
12-16—5-15	102.00
5-16—12-15	75.00
Fajardo (Including Luquillo):	
12-16—5-15	102.00
5-16—12-15	75.00
Ft. Buchanan (Incl. GSA Service Center, Guaynabo):	
12-16—5-15	102.00
5-16—12-15	75.00
Ponce (Incl. Ft. Allen NCS)	66.00
Roosevelt Roads:	
12-16—5-15	102.00
5-16—12-15	75.00
Sabana Seca:	
12-16—5-15	102.00
5-16—12-15	75.00
San Juan (Incl. San Juan Coast Guard Units):	
12-16—5-15	102.00
5-16—12-15	75.00
All other localities	63.00
Virgin Islands of U.S.:	
12-1—4-30	126.00
5-1—11-30	74.00
Wake Island [2]	15.00
All other localities	20.00

[1] Commercial facilities are not available. This per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

M.S. Healy,

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

July 21, 1981.

[FR Doc. 81-21768 Filed 7-23-81; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Bass Enterprises Production Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, 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.

EFFECTIVE DATE: July 9, 1981.

COMMENTS BY: August 24, 1981.

ADDRESS: Send comments to: Wayne I. Tucker, Southwest District Manager, Economic Regulatory Administration, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, Phone: 214/767-7745.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, Southwest District Manager, Economic Regulatory Administration, Department of Enegy, P.O. Box 35228, Dallas, Texas 75235, phone: 214/767-7745.

SUPPLEMENTARY INFORMATION: On July 9, 1981 the Office of Enforcement of the ERA executed a Consent Order with Bass Enterprises Production Company of Fort Worth, Texas. Under 10 CFR 205.199J(b) a Consent Order which involves a sum of $500,000 or less in the aggregate excluding penalties and interest, becomes effective upon its execution.

Because the DOE and Bass Enterprises Production Company wish to expeditiously resolve this matter as agreed and to avoid delay in the payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with Bass effective as of the date of its execution by the DOE and Bass.

I. The Consent Order

Bass Enterprises Production Company (Bass) is a firm engaged in the production of crude oil and was 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 Economic Regulatory Administration as a result of its audit of Bass the Office of Enforcement, ERA, and Bass entered into a Consent Order, the significant terms of which are as follows:

1. During the period September 1, 1973 through December 31, 1977 Bass allegedly sold crude oil above the allowable prices specified at 10 CFR Part 212, Subpart D.

2. Bass and the DOE have agreed to a settlement of $497,500, including interest, plus a sum of $2,500 in compromise of civil penalties. This amount will be refunded by Bass on or before 30 days following the effective date of the Consent Order. The negotiated settlement was determined to be in the public interest as well as the best interest of the DOE and Bass.

3. This Consent Order constitutes neither an admission by Bass that ERA regulations have been violated nor a finding by the ERA that Bass has violated ERA regulations.

4. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Bass 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.1. above, the sum of $497,500 in the manner specified in I.2. above. Refunded overcharges 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. The funds 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 through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. 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 being required. Written notification of 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 Wayne I. Tucker, Southwest District Manager, Economic Regulatory Administration, Department of Energy, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/767–7745.

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 the Bass Enterprises Production Company Consent Order". We will consider all comments we received by 4:30 p.m., local time, August 24, 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 Dallas, Texas on the 15th day of July 1981.

Wayne I. Tucker,

Southwest District Manager, Economic Regulatory Administration.

FR Doc.81–21716 Filed 7–23–81; 8:45 am]

BILLING CODE 6450–01–M

Bill Wilson Oil Co., Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, 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.

EFFECTIVE DATE: June 30, 1981.

COMMENTS BY: August 24, 1981.

ADDRESS: Send comments to: Wayne I. Tucker, Southwest District Manager, Economic Regulatory Administration, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, Southwest District Manager, Economic Regulatory Administration, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, phone: 214/767–7745.

SUPPLEMENTARY INFORMATION: On June 30, 1981 the Office of Enforcement of the ERA executed a Consent Order with Bill Wilson Oil Co., Inc., of Big Springs, Texas. 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, may be made effective upon its execution.

Because the DOE and Bill Wilson Oil Co., Inc., wish to expeditiously resolve this matter as agreed, the DOE has determined that it is in the public interest to make the Consent Order with Bill Wilson Oil Co. effective as of the date of its execution by the DOE and McLain Truck Service.

I. The Consent Order

Bill Wilson Oil Co., with its home office in Big Springs, Texas, is a firm engaged in the resale of motor gasoline and is 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 Economic Regulatory Administration as a result of its audit of sales to these products, the Office of Enforcement, ERA and Bill Wilson Oil Co. entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the Consent Order was March 1, 1979 through July 31, 1979, and it included all sales of the above mentioned products which were made during that period.

2. Bill Wilson Oil Co. improperly applied the provisions of 10 CFR Part 211 when determining the proper allocation fractions for its sales of motor gasoline.

3. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order. You should send your comments to Wayne I. Tucker, Southwest District Manager, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to Mary Johnson at the same address or by calling her at 214/767–7745.

You should identify your comments on the outside of your envelope and on the documents you submit with the designation, "Comments on Bill Wilson Oil Co., Inc. Consent Order." The ERA will consider all comments received by 4:30 p.m. local time on August 24, 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 Dallas, Texas on the 30th day of June 1981.

Wayne I. Tucker,

Southwest District Manager, Economic Regulatory Administration.

[FR Doc. 81–21716 Filed 7–23–81; 8:45 am]

BILLING CODE 6450–01–M

Grace Petroleum Corp.; Action Taken on Proposed Consent Order

AGENCY: Economic Regulatory Administration, 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 a proposed Consent Order and provides an opportunity for public comment on the proposed Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

EFFECTIVE DATE: June 30, 1981.

COMMENTS BY: August 24, 1981.

ADDRESS: Send comments to: Wayne I Tucker, Southwest District Manager, Economic Regulatory Administration, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, Phone: 214/767–7745.

SUPPLEMENTARY INFORMATION: On June 30, 1981 the Office of Enforcement of the ERA executed a proposed Consent Order with Grace Petroleum Corporation of Oklahoma City. Under 10 CFR 205.199J(b) a proposed Consent Order which involves a sum of $500,000 or more in the aggregate, excluding penalties and interest, becomes effective only after the DOE has received comments 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

Grace Petroleum Corporation (Grace) is a firm engaged in the production of crude oil and was 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 Economic Regulatory Administration as a result of its audit of Grace the Office of Enforcement, ERA and Grace entered into a Consent Order, the significant terms of which are as follows:

1. During the period September 1, 1973 through January 27, 1981, Grace allegedly sold crude oil above the allowable prices specified at 10 CFR Part 212, Subpart D and 6 CFR Part 150, Subpart L.

2. Grace and the DOE have agreed to a $1,450,000 settlement for all overcharges and interest. Grace will also pay $25,000 to the U.S. Treasury as a compromise for civil penalties. Grace has agreed to make payment within thirty (30) days of the effective date of the Consent Order. The negotiated settlement was determined to be in the public interest as well as the best interest of the DOE and Grace.

3. This Consent Order constitutes neither an admission by Grace that ERA regulations have been violated nor a finding by the ERA that Grace has violated ERA regulations.

4. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

In this Consent Order, Grace 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.1. above, the sum of $1,450,000 in the manner specified in I.2. above. Refunded overcharges will be in the form of certified checks made payable to the United Stated Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. The funds 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 through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. 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 being required. Written notification of 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 Wayne I. Tucker, Southwest District Manager, Economic Regulatory Administration, Department of Energy, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/767–7745.

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 the Grace Petroleum Corporation Consent Order". We will consider all comments we received by 4:30 p.m., local time, August 24, 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 Dallas, Texas on the 10th day of July 1981.

Herbert F. Buchanan,

Deputy District Manager, Southwest District, Economic Regulatory Administration.

[FR Doc. 81-21717 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA–FC–80–008; ERA Case No. 51007–0638– 21, 22, 23, 24–22]

Florida Power Corp.; Modification of Decision and Order Granting Exemptions From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

The Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of its approval of a request by Florida Power Corporation (FPC) to modify ERA's Decision and Order issued on August 8, 1980 (45 FR 52864) to provide FPC with greater flexibility in the operation of its Suwannee River peakload combustion turbines (CT–1 through CT–4).

Condition A of the Order sets forth specific peakload operating hours.

Condition B of the Order specifies a reporting requirement whenever FPC operates any or all of the units in non-specified peakload hours (i.e. hours not specified in Condition A). The inflexibility of these conditions results, at times, in less than the most efficient use of these units. Therefore, conditions A and B of the Order are being modified to read as follows:

A. FPC shall operate the units for peakload purposes and shall not produce more than 94,500,000 KWH during any 12-month period with each of the proposed units, Suwannee CT-1 through CT-4.

B. FPC shall report to ERA, at the end of each 12-month period from the first day of operation of each powerplant, and, if applicable, upon reaching the maximum number of kilowatt hours of permitted generation within each 12-month period, the name, location, and design capacity of the exempted unit, the number of hours permitted by the exemption, and the number of hours of actual operation.

Issued in Washington, D.C. on July 16, 1981.

Robert L. Davies,

Director, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-21653 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-81-004; ERA Case No. 51209-1393-28-22]

Gulf States Utilities Co.; Roy S. Nelson Unit No. 8; Decision and Order Granting Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby issues this Decision and Order to Gulf States Utilities Company (GSU) granting a permanent peakload exemption from the prohibitions against (1) the use of petroleum or natural gas as a primary energy source by new powerplants and (2) the construction of new powerplants without the capability to use an alternate fuel as a primary energy source, which are contained in section 201 of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. § 8301 *et seq.* (FUA or the Act).

Background

On February 12, 1981, GSU filed a petition with ERA for a permanent peakload powerplant exemption to enable it to use oil or natural gas as a primary energy source in an 83,470 kilowatt oil or natural gas-fired combustion turbine powerplant to be known as Roy S. Nelson Unit No. 8 and which is to be located at Westlake, Louisiana. ERA accepted the petition on March 26, 1981, and published a notice of acceptance, together with a statement of the reason set forth in the petition for requesting the exemption, in the **Federal Register** on April 2, 1981 (46 FR 19973). Publication of the notice of acceptance commenced a 45-day public comment period pursuant to section 701 of FUA. During this period, which ended on May 18, 1981, interested parties were also afforded an opportunity to request a public hearing. No comments or requests for a public hearing were received.

ERA's staff reviewed the information contained in the record of the proceeding. A Tentative Staff Analysis (TSA) was prepared which recommended that ERA issue an order granting GSU a permanent peakload powerplant exemption to use oil or natural gas in Roy S. Nelson Unit No. 8 subject to certain terms and conditions. A notice of availability of the TSA was published in the **Federal Register** on June 26, 1981 (46 FR 33084). The publication of the notice of availability opened a 14-day public comment period which ended July 10, 1981, during which no comments were received.

On the basis of ERA's review of the entire record of this proceeding, ERA has determined to grant the exemption requested by GSU to use oil or natural gas in Roy S. Nelson Unit No. 8, subject to the terms and conditions enumerated below.

On August 11, 1980, DOE published in the **Federal Register** (45 FR 53199) a notice of proposed amendments to the guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption by certification for a peakload powerplant, was identified as an action which normally does not require an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. GSU has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under this exemption. The Environmental Checklist completed and certified to by GSU pursuant to 10 CFR § 503.15(b) has been reviewed by DOE's Office of Environment, in consultation with the Office of the General Counsel. GSU's responses to the questions contained therein indicate that the operation of the peakload powerplant will have no impact on those areas regulated by specified laws that impose consultation requirements on DOE, and otherwise affirm the applicability of the categorical exclusion to this FUA action. ERA has not received any public comments relating to this action which raise a substantial question regarding the applicability of the categorical exclusion in this case. Therefore, no additional environmental review is deemed to be required.

DATES: This order will take effect on September 22, 1981.

FOR FURTHER INFORMATION CONTACT:

Jack C. Vandenberg, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, Phone (202) 653-4055

Louis T. Krezanosky, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 3012B, Washington, D.C. 20461, Phone (202) 653-4208

Christina Simmons, Office of General Counsel, Department of Energy, 1000 Independence Ave., S.W., Room 6B-178, Washington, D.C. 20585, Phone (202) 252-2967

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. § 8301 *et seq.* (FUA or the Act), prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. Final rules applicable to new facilities issued by ERA on May 30, 1980, were published in the **Federal Register** on June 6, 1980 (45 FR 38276) and became effective August 5, 1980.

Gulf States Utilities Company (GSU) plans to install an 83,470 KW natural gas or oil-fired combustion turbine unit to be called Roy S. Nelson Unit No. 8 at Westlake, Louisiana. Based upon estimates by GSU the proposed unit will have a fuel heat input rate of 894 MM BTU per hour at peak capacity. Roy S. Nelson Unit No. 8 is scheduled for commercial operation in June 1982.

GSU submitted a sworn statement with the petition signed by Mr. J. H. Derr, Vice President of GSU, as required by 10 CFR § 503.41(b)(1). In his statement, Mr. Derr certified that Roy S. Nelson Unit No. 8 will be operated solely as a peakload powerplant and to meet peakload demand for the life of the plant. He also certified that the maximum design capacity of the unit is 83,470 KW and that the maximum generation that the unit will be allowed during any 12-month period is the design capacity times 1,500 hours or 125,205,000 Kwh.

Order

ERA hereby grants to GSU a permanent exemption from the prohibitions of FUA with respect to the use of oil or natural gas in Roy S. Nelson Unit No. 8 provided that the powerplant is operated solely as a peakload powerplant and to meet peakload demand subject to the following terms and conditions imposed pursuant to the authority granted to ERA by section 214(a) of the Act:

Terms and Conditions

A. GSU shall not produce more than 125,205,000 Kwh during any 12-month period with the proposed unit. GSU shall provide annual estimates of the expected periods (hours during specific months) of operation of Roy S. Nelson Unit No. 8 for peakload purpose (e.g., 8:00–10:00 a.m. and 3:00–6:00 p.m. during the June–September period, etc.). Estimates of the hours during which GSU expects to operate Roy S. Nelson Unit No. 8 during the first 12-month period shall be furnished within 30 days from the date of this order.

B. GSU shall comply with the reporting requirements set forth in 10 CFR § 503.41(d).

C. The quality of any petroleum to be burned in this unit will be the lowest grade available which is technically feasible and capable of being burned consistent with applicable environmental requirements.

D. GSU shall comply with any terms and conditions which may be imposed pursuant to the environmental requirements set forth at 10 CFR § 503.15(b).

Issued in Washington, D.C. on July 16, 1981.

Robert L. Davies,

Director, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-21652 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-80-015; OFC Case No. 65012-9122-03-12]

Order Granting Exemption from Prohibitions

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order Granting an Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On April 8, 1980, Minnesgasco Energy Center, Inc. (MEC) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) seeking a permanent general use exemption for a major fuel burning installation (MFBI) from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. § 8301 *et seq.*, (FUA or the Act), which prohibit the use of petroleum and natural gas as a primary energy source in certain new MFBI's. Criteria and the procedure for petitioning for an exemption from the prohibitions of FUA are contained in 10 CFR Parts 500 and 501 and 10 CFR Part 503 published on June 6, 1980, at 45 FR 38276 and 38302 respectively.

MEC requested a permanent exemption for an oil and natural gasfired packaged boiler (identified hereafter as Unit 3) to be installed at its heating plant located in Minneapolis, Minnesota. The petition for exemption is based upon a claim of lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum in the MFBI for which the exemption is requested.

Pursuant to section 212(a)(1)(A)(ii) of the Act and 10 CFR § 503.32, and subject to specified terms and conditions stated herein, ERA hereby issues this order granting a permanent exemption based on the lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum to MEC to permit the use of natural gas and No. 6 fuel oil in Unit 3.

DATE: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on September 22, 1981, the 60th calendar day after publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:

Jack Vandenberg, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street NW., room B–110, Washington, D.C. 20461, (202) 653–4033.

Edward J. Peters, Jr., Acting Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, D.C. 20461, Washington, D.C. 20461, (202) 653–3934.

Marya A. Rowan, Office of the General Counsel, Department of Energy, 1000 Independence Avenue SW., room 6B–178, Washington, D.C. 20585, (202) 252–2967.

William H. Freeman, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street NW., room 3128, Washington, D.C. 20461, (202) 653–4496

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available for inspection upon request at: ERA, Room B–110, 2000 M Street NW., Washington, D.C., Monday through Friday 8 a.m.–4:30 p.m.

SUPPLEMENTARY INFORMATION: MEC filed its petition with ERA on April 8, 1980, under the provisions of 10 CFR § 505.22 of the then effective interim rule (44 FR 28530 and 44 FR 28950, May 15 and 17, 1979, respectively). Subsequent to the filing of MEC's petition, ERA's interim rule procedurally and substantively implementing the new facilities provisions of FUA was finalized (45 FR 38276 and 38302, June 6, 1980) and became effective on August 5, 1980. Under the authority of section 212(a)(1)(A)(ii) of the Act, 10 CFR § 503.32 sets forth the eligibility criteria and evidentiary requirements governing the permanent exemption based upon lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. ERA's analysis and determination on MEC's petition for exemption is based on the criteria contained in that section.

In accordance with the procedural requirements of FUA and 10 CFR § 501.3(d), ERA published notice of its acceptance of MEC's petition in the **Federal Register** on August 11, 1980 (45 FR 53202), commencing a 45-day public comment period pursuant to section 701 of FUA. As required by section 701 (f) and (g) of the Act, ERA provided a copy of MEC's petition to the Environmental Protection Agency and the Federal; Trade Commission for their comment. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed on September 25, 1980. No comments were received and a public hearing was not requested.

On June 5, 1981, ERA published in the **Federal Register** a Notice of Availability of a Tentative Staff Analysis recommending that MEC's petition be granted and provided a 14-day period for interested persons to submit written comments or to request a public hearing (46 FR 30172). That period ended June 19, 1981. No comments were received. No public hearing was requested.

Decision and Order: Based upon the entire record of this proceeding, ERA has determined that MEC has satisfied all of the eligibility requirements for the requested exemption, as set forth in 10 CFR § 503.32, by demonstrating to ERA's satisfaction that:

1. MEC has made a good faith effort to obtain an adequate and reliable supply of an alternate fuel of the quality and quantity necessary to conform with design and operational requirements for use as a primary energy source in Unit 3; and

2. The cost of using coal, a petroleum coke/coal mixture, refuse derived fuel, steam, and the coal-oil mixture considered by MEC would substantially exceed the cost of using imported petroleum.

Accordingly, pursuant to section 212(a)(1)(A)(ii) of FUA, ERA hereby grants MEC a permanent exemption based upon a lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum, which subject to the term and condition stated below, permits the use of natural gas and No. 6 fuel oil in Unit 3.

Term and Condition: Section 214(a) of FUA provides ERA the authority to attach terms and conditions which are appropriate and consistent with the purposes of the Act to any order granting an exemption. Accordingly, the following term and condition is attached to this order granting the requested exemption.

The quality of any petroleum to be burned in the unit will be the lowest grade available, technically feasible, and capable of being burned as the primary energy source for Unit 3, consistent with applicable environmental requirements.

National Environmental Policy Act of 1969 (NEPA) Review: On the basis of the analysis provided by the Office of Fuels Conversion, and reviewed by the Office of Environmental Protection, Safety, and Preparedness, with consultation from the Office of the General Counsel, the Department of Energy concluded that the granting of this exemption will not be a major Federal action significantly affecting the quality of the human environment, within the meaning of NEPA. Accordingly, neither an environmenal impact statement nor an environmental assessment is required.

Effective Date of Order: This order and its provisions shall take effect on September 22, 1981.

Judicial Review: Pursuant to section 702(c) of the Act and 10 CFR§ 501.69, any person aggrieved by this order may petition for judicial review at any time before the 60th day after the date of publication of this order in the Federal Register.

(Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. § 7101 *et seq.*) as amended by Pub. L. 95-509, Pub. L. 95-619, Pub. L. 95-620 and Pub. L. 95-621; Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620 (42 U.S.C. § 8301 *et seq*); E.O. 11790, 39 FR 23185 (June 25, 1974); E.O. 12009, 42 FR 46267 (September 15, 1977))

Issued in Washington, D.C. on July 16, 1981.

Robert L. Davies,

Director, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-21654 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ST81-307-000]

Cabot Pipeline Corp., Application for Approval of Rates

July 20, 1981.

Take notice that on June 12, 1981, Cabot Pipeline Corporation (Applicant), P.O. Box 3784, Charleston, West Virginia 25337, filed in Docket No. ST81-307-000 an application pursuant to § 284.144 (a)(3) of the Commission's regulations for approval of rates charged Transwestern Pipeline Company (Transwestern) for the treatment and transportation of surplus natural gas supplies sold to Transwestern, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that by contract dated June 1, 1981, it agreed to sell to Transwestern up to 30 billion Btu of natural gas per day which is surplus to Applicant's gas demand requirements for a maximum term of two years from the date of initial delivery. It is said that the contract provides that the price for the proposed sale should equal Applicant's weighted average cost of purchased gas in New Mexico plus 34.0 cents per million Btu to cover the cost of Applicant's gathering, treating, processing, transporting and delivering the gas.

Applicant indicates that its intrastate customer, Southwestern Public Service Company, has informed Applicant that it desires to reduce its takes of gas. Applicant estimates that such reduction in takes would make available surplus gas in an amount averaging 12 billion Btu per day or 4.38 trillion Btu annually.

Applicant states that its proposed transportation rate of 34.0 cents per million Btu is 24.0 cents per million Btu lower than Applicant's cost. Applicant further states that it would be necessary for it to install compression at the point of delivery to Transwestern. Applicant estimates that the cost of this compression would be 5.0 cents per million Btu. The 34.0 cents per million Btu transportation component charged Transwestern is fully cost supported and therefore fair and equitable.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 7, 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). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to made the protestants parties to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-21752 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4581-000]

Central Utah Water Conservancy District; Application for Preliminary Permit

July 21, 1981.

Take notice that Central Utah Water Conservancy District (Applicant) filed on April 23, 1981, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)) for Project No. 4581 known as the Moon Lake Hydro Project located on the West Fork of Lake Fork River in Duchesne County, Utah. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Lynn S. Ludlow, Secretary and General Manager, Central Utah Water Conservancy District, P.O. Box 427, Orem, Utah 84057.

Project Description. The proposed project would utilize the existing Bureau of Reclamation's Moon Lake Dam and Reservoir, operated and maintained by the Moon Lake Water Users Association, and would consist of: (1) A penstock utilizing the existing outlet works in the left dam abutment; (2) a new powerhouse containing generating units having a total rated capacity of 3,000 kW; (3) a tailrace; (4) a new transmission line, approximately 12 miles long; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 6,000,000 kWh.

Proposed Scope of Studies under Permit. A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of three 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 $40,000.

Competing Applications. This application was filed as a competing application to Utah Hydro Corporation's application for Project No. 3541 filed on October 8, 1980, under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing application or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or petitions to Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before August 21, 1981.

Filing and Service of Responsive Documents. Any comments, protest, or petitions to intervene must bear in all capital letters the title "COMMENTS", "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. 4581. Any comments, 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, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any 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. 81-21721 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-22-000]

Consolidated Gas Supply Corp.; Change in Rates

July 21, 1981.

Take notice that on July 9, 1981, Consolidated Gas Supply Corporation (Consolidated) tendered for filing Substitute Twenty-Fifth Revised Sheet No. 16 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective May 1, 1981.

Consolidated states that the purpose of the filing is to comply with Ordering Paragraph (B) of FERC order issued June 29, 1981, at Docket Nos. TA81-2-31, *et al.* The order required all pipelines which include a current adjustment for the First Use Tax in their rates to file revised tariff sheets to reflect its elimination.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 4, 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-21754 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-2-001 (PGA81-2, IPR81-2, DCA81-2)]

East Tennessee Natural Gas Co.; Revised Tariff Filing

July 21, 1981.

Take notice that on July 10, 1981, East Tennessee Natural Gas Company (East Tennessee) tendered for filing Substitute First Revised Sheet No. 4 to Original Volume No. 1 of its FERC Gas Tariff to be effective on July 1, 1981. East Tennessee states that the purpose of this tariff sheet is to revise its PGA rates to reflect in its gas rate the adjustment in the rates of Tennessee Gas Pipeline Company, a Division of Tenneco Inc., resulting from elimination of the Current First Use Tax Rate Adjustment from Tennessee's rates and to correct for certain of East Tennessee's rates the inadvertent omission of the demand surcharge for amortizing the unrecovered purchased gas cost account.

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 August 4, 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; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-21753 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. RP76-136-017, etc.]

Eastern Shore Natural Gas Co., et al.; Filing of Pipeline Refund Reports and Refund Plans

July 21, 1981.

Take notice that the pipelines listed in the Appendix below 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 below.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before August 4, 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
June 11, 1981	Eastern Shore Natural Gas Company	RP76-136-017	Report.
June 12, 1981	Midwestern Gas Transwestern Company	RP80-23-010	Report.
July 6, 1981	South Georgia Natural Gas Company	RP70-7, et al	Report.
July 6, 1981	Michigan Wisconsin Pipeline Company	RP81-1-000	Report.
July 6, 1981	Michigan Wisconsin Pipeline Company	RP80-3	Report.
July 7, 1981	Consolidated Gas Supply Corporation	RP72-157-045	Report.
July 10, 1981	Columbia Gas Transmission Corporation	RP76-95	Report.

[FR Doc. 81-21722 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA81-65-000]

Edgington Oil Co., Inc.; Filing of Petition for Review

July 21, 1981.

Take notice that Edgington Oil Co., Inc. on July 15, 1981 filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before August 5, 1981, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene or or before August 5, 1981, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-21755 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP81-91-000]

El Paso Natural Gas Co.; Tariff Filing

July 21, 1981.

Take notice that on July 7, 1981, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") regulations under the Natural Gas Act, the following revised tariff sheets of its FERC Gas Tariff, Original Volume No. 1:

Ninth Revised Sheet No. 67
Sixth Revised Sheet No. 67-A
Sixth Revised Sheet No. 67-B
Fifth Revised Sheet No. 67-C
Eighth Revised Sheet No. 67-D

El Paso states that the tariff sheets identified above, when accepted for filing and permitted to become effective, are designed to modify Section 19, Purchased Gas Cost Adjustment Provision ("PGAC") contained in El Paso's FERC Gas Tariff, Original Volume No. 1. The PGAC is proposed to be modified to (i) refine the methodology in determining the purchased gas cost adjustment so as to more timely recoup the cost of purchased gas, thereby reducing the amounts collected by El Paso from its customers on a deferred basis and (ii) delete the language pertaining to Rhodes Storage which is no longer applicable to the PGAC provision.

El Paso further states it has requested relief, from certain aspects of Article XII of its Stipulation and Agreement dated January 16, 1980 as approved by Commission order issued May 30, 1980 at Docket No. RP79-12 (Extension).

El Paso states that copies of the instant tender have been served upon all interstate pipline system customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said tariff filing should, on or before Aug. 4, 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). Protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-21723 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-495]

Iowa Public Service Co.; Refund Report

July 21, 1981.

Take notice that Iowa Public Service Company on June 12, 1981, submitted a refund report in the above-captioned docket. This refund report is pursuant to an uncontested settlement which was approved by order issued May 1, 1981.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 12, 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. 81-21724 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4580-000]

Last Chance Canal Co.; Application for Exemption From Licensing of a Small Hydroelectric Project of 5 Megawatts or Less

July 21, 1981.

Take notice that the Last Chance Canal Company filed with the Federal Energy Regulatory Commission on April 23, 1981, an application for exemption for the Last Chance Canal Project No. 4580 from all or part of Part I of the Federal Power Act pursuant to 18 CFR Part 4 Subpart K (1980) implementing in part section 408 of the Energy Security Act of 1980.[1] The proposed project would be located on the Bear River in Caribou County, Idaho. Correspondence with the Applicant should be directed to: Mr. Orrin Harris; Last Chance Canal Company; Grace, Idaho 83241.

Project Description. The proposed project would consist of: (1) An existing rock-over-wood cribbing dam, 15 feet high and 175 feet long; (2) a reservoir of negligible storage capacity; (3) the Last Chance Canal, 1,370 feet long; ending at (4) a concrete diversion structure containing radial control gates; and (5) appurtenant facilities.

Applicant proposes to install: (1) An intake structure adjacent to the diversion structure with 5 electrically operated vertical slide gates; (2) 5-42 inch diameter penstocks, 100 feet long; (3) a powerhouse containing new generators, 4 units at 350 kW and 1 unit at 255 kW for a total generating capacity of 1,655 kW; (4) a 12.5 kV transmission line ¾ mile long; (5) electric controls on the existing diversion radial control gates; and (6) appurtenant works. The Applicant estimates that the average annual energy output would be 8,204,000 kWh.

Purpose of Exemption. An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

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 exemption. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of an exemption and consistent with the purpose of an exemption as described in this notice. No other formal requests for comments will be made. If an agency does not file comments within 60 days of the date of issuance of this notice, it will be presumed to have no comments.

Competing Applications. Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before September 8, 1981, either a competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than January 6, 1982. Applications for a preliminary permit will not be accepted. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license 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, protests, or petitions to intervene must be received on or before September 8, 1981.

Filing and Service of Responsive Documents. Any comments, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "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 exemption for Project No. 4580. Any comments, notices of intent, competing application, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commisssion'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. 81-21725 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[1] Pub. Law 96-294, 94 Stat. 611. Section 408 of the ESA amends *inter alia*, Sections 405 and 408 of the Public Utility Regualtory Policies Act of 1978 (16 U.S.C. 2705 and 2708).

[Project No. 4558-000]

Long Lake Energy Corp.; Application for Preliminary Permit

July 21, 1981.

Take notice that the Long Lake Energy Corporation (Applicant) filed on April 20, 1981, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for Project No. 4558 known as the Lake Algonquin Project located on the Sacandaga River in Hamilton County, New York. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Donald E. Hamer; Long Lake Energy Corporation; 330 Madison Avenue, 7th Floor; New York, New York 10017.

Project Description. The proposed project would consist of: (1) An existing concrete gravity dam with a crest length of 250 feet having a height of 12 feet; (2) an existing reservoir with a surface area of 275 acres at a mean surface elevation of 986 feet (USGS datum); (3) existing control gates; (4) a new penstock; (5) a new powerhouse containing new generators with a rated capecity of 780 kW; (6) a new tailrace; (7) 2,000 feet of new transmission line; (8) new switchyard equipment; and (9) appurtenant works. The applicant estimates the average annual energy output would be 3,500,000 kWh. The existing facililties are owned by the Town of Wells.

Proposed Scope of studies under Permit. A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of three years during which time the applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the

outcome of the studies, Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of studies under the permit would be $70,000.

Competing Applications. Anyone desiring to file a competing application must submit to the Commission, on or before September 25, 1981, either the competing application itself (See 18 CFR 4.33(b) and (c) (1980)) or a notice of intent (See 18 CFR 4.33(a) and (d) (1980)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before Septemer 25, 1981.

Filing and Service of Responsive Documents. Any filings 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, and the Project Number of this notice. Any of the above named documents 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, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. 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. 81-21726 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ID-1967-000]

Margery Somers Foster; Filing

July 21, 1981.

The filing individual submits the following:

Take notice that on July 13, 1981, Margery Somers Foster filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions or, in the alternative, to dismiss the application for want of jurisdiction:

Director, Public Service Electric and Gas Company

Director, Prudential Insurance Company of America

Any person desiring to be heard or to protest said filing should file a petition to intervene or 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 August 12, 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. 81-21727 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-48-001]

Michigan Wisconsin Pipe Line Co.; Changes in FERC Gas Tariff

July 21, 1981.

Take notice that Michigan Wisconsin Pipe Line Company, on July 10, 1981, tendered for filing as part of its F.E.R.C. Gas Tariff, Original Volume No. 1, Substitute Eleventh Revised Sheet No. 7, to be effective May 1, 1981.

Michigan Wisconsin states that this tariff filing is being made in compliance with the Commission's "Order Directing Pipelines to Cease Collection of the First Use Tax From Their Customers, Terminating Tracking of the First Use Tax and Requiring the Filing of Revised Tariff Sheets," issued June 29, 1981, in, *inter alia*, the captioned docket, and is expressly conditioned on such Order becoming final and no longer subject to appeal.

Michigan Wisconsin further states that the purpose of the filing is to eliminate the current adjustment in its rates associated with the Louisiana First Use Tax.

Copies of the filing were served on Michigan Wisconsin'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 §§ 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 August 4, 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. 81-21756 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-5-002 (PGA81-2, IPR81-2, DCA81-2)]

Midwestern Gas Transmission Co.; Revised Tariff Filing

July 21, 1981.

Take notice that on July 10, 1981, Midwestern Gas Transmission Company (Midwestern) tendered for filing Substitute First Revised Sheet No. 5 to Original Volume No. 1 of its FERC Gas Tariff to be effective on July 1, 1981. Midwestern states that the sole purpose of this tariff sheet is to reflect in the gas rate for Midwestern's Southern System the adjustment in the rates of Tennessee Gas Pipeline Company, a Division of Tenneco Inc., resulting from elimination of the Current First Use Tax Rate Adjustment from Tennessee's rates.

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 August 4, 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; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-21728 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-25-001]

Mississippi River Transmission Corp.; Rate Change Filing

July 21, 1981.

Take notice that on July 9, 1981, Mississippi River Transmission Corporation ("Mississippi") tendered for filing Substitute Seventy-Seventh Revised Sheet No. 3A and Substitute Seventy-Eighth Revised Sheet No. 3A to its FERC Gas Tariff, First Revised Volume No. 1. Effective dates of May 1, 1981 and June 1, 1981, respectively, are proposed.

The purpose of the filing is to eliminate the current portion of the Louisiana First Use Tax surcharge adjustment from Mississippi's rates pursuant to ordering Paragraph (B) of the Commission's order of June 29, 1981, in Docket No. TA81-2-31, et. al.

Mississippi states that copies of its filing have been served on all 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, N.E., Washington, D.C. 20426, in accordance with §§1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 4, 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. 81-21757 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. TA81-2-26,000, etc.]

Natural Gas Pipeline Company of America; Change in Rates

July 21, 1981.

Take notice that on July 9, 1981, Natural Gas Pipeline Company of America (Natural) tendered for filing Substitute Forty-third Revised Sheet No. 5 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective May 1, 1981.

Natural states that the purpose of the filing is to comply with Ordering Paragraph (B) of FERC order issued June 29, 1981 at Docket Nos. TA81-2-31, et al. The order required all pipelines which include a current adjustment for the First Use Tax in their rates to file revised tariff sheets to reflect its elimination.

A copy of this filing has been mailed to Natural's jurisdictional customer 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 §§ 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 August 4, 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-21758 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES81-62-000]

Pacific Power & Light Co.; Application

July 21, 1981.

Take notice that on July 15, 1981, Pacific Power & Light Company (Applicant), a Maine corporation, qualified to transact business in the states of Oregon, Wyoming, Washington, California, Montana, and Idaho, with its principal business office at Portland, Oregon, filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking authorization to engage in negotiations for the placement of no more than $35 million of unsecured senior notes.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 17, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-21729 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER78-409]

Philadelphia Electric Co.; Compliance Filing

July 21, 1981.

Take notice that on July 1, 1981, Philadelphia Electric Company submitted for filing a supplement to Rate Schedule FERC No. 44 pursuant to the Commission's Letter Order dated April 21, 1981 and Order dated June 22, 1981. According to Philadelphia Electric Company, the supplement is a single sheet which is designated as Supplement No. 6 to Rate Schedule FERC No. 44—effective December 22, 1980—First Substitute Third Revised Page No. 1, Superseding Third Revised Page No. 1. According to Philadelphia Electric Company, this page replaces the page presently on file with the Commission and designated as "Third Revised Page No. 1, Superseding First Revised Page No. 1".

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before August 7, 1981. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-21730 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3923-001]

Sun Ventures, Ltd.; Application for Preliminary Permit

July 21, 1981.

Take notice that Sun Ventures, Ltd. (Applicant) filed on June 8, 1981, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 3923 known as the Blue Lakes Ranch Power Project located on the Snake River in Twin Falls and Jerome Counties, Idaho. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Vernon F. Ravenscroft and/or Ms. Helen Chenoweth, Consulting Associates, Inc., P.O. Box 893, Boise, Idaho 83701.

Project Description—The proposed project would consist of: (1) A 35-foot high, 800-foot long earth fill dam; (2) four 10-foot diameter, 100-foot long steel penstocks; (3) a powerhouse containing four generating units with a total rated capacity of 24,000 kW; and (4) appurtenant facilities.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 30-month preliminary permit to prepare a project report, including preliminary designs, and results of geological, hydrological, environmental and economic feasibility studies. Applicant has indicated that: (a) No new roads would be required for conducting the studies; (b) test borings would be done in areas which are clear of vegetation, boring holes would be backfilled, and the ground surface reconditioned to the extent possible.

The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Federal, State and local agencies, preparing a license application, conducting final field surveys and preparing designs is estimated by the Applicant to be $100,000.

Competing Applications. Anyone desiring to file a competing application must submit to the Commission, on or before September 28, 1981, either the competing application itself (See 18 CFR 4.33 (a) and (d) (1980)) or a notice of intent (See 18 CFR 4.33 (b) and (c) (1980)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments. Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be otbained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene. Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 28, 1981.

Filing and Service of Responsive Documents. Any filings 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, and the Project Number of this notice. Any of the above named documents 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 RB at the above address. A copy of any notice of intent, competing applications, 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. 81-21731 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-6-002]

Sea Robin Pipeline Co.; Tariff Filing

July 21, 1981.

Take notice that on July 9, 1981, Sea Robin Pipeline Company (Sea Robin) tendered for filing Substitute First Revised Sheet No. 4 to Original Volume No. 1 of its FERC Gas Tariff to be effective on May 1, 1981. Sea Robin states that the sole purpose of these tariff sheets is to eliminate the Current First Use Tax Rate Adjustment from its rates as required by the Commission's June 29, 1981 Order in the captioned docket.

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 procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 4, 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. 81-21759 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-9-002 (PGA81-2, IPR81-2, DCA81-2, R&D81-2 and LFUT81-2)]

Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.; Tariff Filing

July 21, 1981.

Take notice that on July 10, 1981, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing Substitute First Revised Sheet Nos. 20 and 22 to Original Volume No. 1 of its FERC Gas Tariff to be effective on July 1, 1981. Tennessee states that the sole purpose of these tariff sheets is to eliminate the Current First Use Tax Rate Adjustment from its rates as required by Ordering Paragraph (C) of the Commission's June 30, 1981 Order in the captioned docket.

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 August 4, 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. 81-21760 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. GP81-30-000]

Geological Survey, Casper, Wyoming, Section 108 NGPA Determination, Midlands Gas Corp.; Preliminary Finding

June 2, 1981.

On March 4 and 9, 1981, the United States Geological Survey (USGS) in Casper, Wyoming, (USGS No. M718-O-E etc., JD81-19731 etc.), notified the Federal Energy Regulatory Commission (Commission) that gas produced from the seven wells in question (*see*, appendix for a listing of the wells) did not continue to qualify as stripper well natural gas under section 108 of the Natural Gas Policy Act of 1978 (NGPA). The Commission published notice of the negative determinations in the **Federal Register**, on March 27 and April 22, 1981.[1]

Section 108(b)(2) of the NGPA provides that a well which previously qualified as a stripper well may continue to qualify as such even though production exceeds the 60 Mcf per production day stripper well limit during any 90-day production period, if the increase in production was the result of the application of recognized enhanced recovery techniques.

Section 271.803(a) of the Commission's regulations defines recognized enhanced recovery techniques as:

> * * * processes or equipment, or both, which when performed or installed by the producer, increase the rate of production of gas from a well. Processes qualifying as recognized enhanced recovery techniques include mechanical as well as chemical stimulation of the reservoir formation. Equipment may include items installed in the well bore or on the surface.
>
> Normal well maintenance, repair, or replacement of equipment or facilities does not qualify as enhanced recovery techniques. Normal completion operations (as defined by the jurisdictional agency or, if the agency has not defined the term, by state custom or practice) which are performed within the two years of the initial completion do not qualify as recognized enhanced recovery techniques * * *

In this case, Midlands petitioned the USGS under § 271.808(A)(2)(i) of the Commission's regulations for determinations that the increased natural gas production from the subject wells, which had previously qualified as stripper wells, was the result of the application of a recognized enhanced recovery technique—namely, the installation of tubing two years or more after a well's completion. The USGS determined that the installation of tubing did not constitute an enhanced recovery technique. According to the USGS, the installation of tubing in the gas wells should be considered as part of the completion of the wells. A conference was held on February 26, 1981, at which the USGS agreed to supplement the negative notices of determination with all the information specified in § 274.104(a) of the Commission's regulations, for purposes of Commission review.

On April 3, 1981, Midlands filed with the Commission a protest of the USGS negative determinations. It is Midland's position that the installation of tubing is not a normal completion operation. In addition, Midlands points out that with respect to the non-federal lands in the Bowdoin Field, which are under the jurisdiction of the Montana Board of Oil & Gas Conservation (Montana), Montana has made affirmative determinations that the installation of tubing two or more years after completion of a well is a recognized enhanced recovery technique.[2]

Section 271.803(a) of the Commission's regulations provides that any technique which increases the rate of production of gas from a well should generally qualify as an enhanced recovery technique. However, the Commission in Order No. 44, Docket No. RM79-73 (issued August 22, 1979), provides that normal completion operations performed within two years of the initial completion do not qualify as recognized enhanced recovery techniques. The two-year period was intended to insure that a producer would not delay installation of a normal completion operation in order to establish the well as a stripper well, apply the completion operation, and then claim that it was a recognized enhanced recovery technique.[3]

In the instant case, the tubing was installed more than two years after initial completion of the wells. Since the two year requirement of § 271.803(a) has been met, it appears that there is lack of substantial evidence supporting the USGS negative determinations.

The Commission finds:

On the basis of the record submitted with these determinations, the Commission hereby makes a preliminary finding, pursuant to 18 CFR 275.202(a)(1)(i), that the negative determinations submitted by the USGS that the subject wells do not qualify as section 108 stripper wells are not supported by substantial evidence in the record on which the determinations were made.

By the direction of the Commission.

Kenneth F. Plumb,

Secretary.

Appendix. —Midlands Gas Corporation

2761 1-27 SOC et al., Federal Docket No. M 718-0-E, FERC NO. JD 81-19731
1561 15-36-31 No. 1, Federal Docket No. M 761-0-E, FERC NO. JD 81-19732
1433 Federal No. 1, Docket No. M 38-1-E, FERC NO. JD 81-19733
2561 253631, Docket No. M 719-0-E, FERC NO. JD 81-19734
2861 Federal 1-28, Docket No. M 763-0-E, FERC NO. JD 81-19735
1451 Federal 143531, Docket No. M 760-0-E, FERC NO. JD 81-19736
2570 No. 1 Federal Docket No. M 762-0-E, FERC NO. JD 81-22871

[FR Doc. 81-21751 Filed 7-23-81; 8:45 am]

BILLING CODE 6450-85-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures and solicitation of further comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from a $2,850,000 fund established by Vickers Energy Corporation, an independent refiner, in settlement of enforcement proceedings brought by the DOE's Office of Enforcement.

DATES AND ADDRESSES: Applications for Refund must be postmarked on or before October 24, 1981, and should be

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[1] In the present case, the 45 day review period did not begin until April 21, 1981. This was due to the fact that Staff, pursuant to § 275.202(b) of the Commission's regulations, sent a letter on April 4, 1981 to the USGS requesting additional information. Staff received the response of the USGS on April 21, 1981 at which time the 45-day review period began.

[2] In response to an inquiry from the Commission's Division of NGPA Compliance for an explanation of its position, the USGS reiterated that it did not consider the running of tubing in a well to be an enhanced recovery technique and that, in its opinion, installing tubing is part of the completion of the well no matter when it is done. The USGS further asserts that the lack of tubing in a well results in restricted flow and that other operators who ran tubing within two years of the initial completion are not eligible to claim that the tubing constitutes an enhanced recovery technique.

[3] In Order No. 44-A, Docket No. RM79-73, *mimeo.*, p. 6 (issued November 9, 1979), the Commission stated: "the purpose of the two-year waiting period was to discourage producers from engaging in this type of waiting game. We considered a two-year period to be a sufficient deterrent."

addressed to Vickers Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Code RF1, 2000 M Street NW., Washington, D.C. 20461. Comments must be postmarked on or before August 24, 1981, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 2000 M Street NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Acting Deputy Director, Office of Hearings and Appeals, Department of Energy, 2000 M Street NW., Washington, D.C. 20461, (202) 653–3137.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR, Part 205, notice is hereby given of the issuance of the final Decision and Order set out below. The final Decision and Order relates to a consent order between Vickers Energy Corporation and the Office of Enforcement of the DOE's Economic Regulatory Administration. *See* 44 FR 29703 (May 22, 1979); 44 FR 48751 (August 20, 1979). The consent order is intended to settle all disputes between the DOE and Vickers with regard to prices charged by the firm in sales of covered products other than crude oil during the period August 19, 1973 through March 1979. Under the terms of the consent order, Vickers has deposited $2,850,000 into an escrow account. It is stipulated in the consent order that the $2,850,000 refund amount is in settlement of allegations that Vickers had overcharged its purchasers of motor gasoline. (This portion of the consent order excludes sales made at company-operated retail service stations.) These purchases were made at the wholesale and retail level.

On February 27, 1981, the Office of Hearings and Appeals issued a Proposed Decision and Order which tentatively established a two-stage refund procedure for the Vickers settlement amount and solicited comments from interested parties concerning the proper disposition of the Vickers Consent Order funds. 46 FR 15320 (March 5, 1981). The final Decision and Order, published concurrently with this Notice, reflects our analysis of comments received from interested parties. As we indicate in the final Decision, Applications for Refund from the Vickers escrow funds may now be filed. Applications will be accepted provided they are postmarked 90 days after the publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.283. We will accept such applications from all persons who purchased Vickers motor gasoline from other than company-operated retail service stations during the period August 19, 1973 through March 1979. In order to establish entitlement to a portion of the Consent Order funds, a purchaser that bought an average monthly volume of 50,000 gallons or less of Vickers motor gasoline during the period for which a refund is claimed must submit only some proof of purchase of the volume claimed. Those purchasers that claim to have purchased an average monthly volume greater than 50,000 gallons of Vickers motor gasoline during the period for which a refund is claimed must establish, in addition to proof of purchase of the volume claimed, that the purchaser did not pass through price increases to its own customers. The specific information required in an Application for Refund is set forth in the final Decision and Order.

In addition, the final Decision addresses the issue of the proper disposition in a second-stage proceeding of the remainder, if any, of the Consent Order funds after all meritorious claims have been paid in the first stage outlined above. The Proposed Decision and Order in this matter stated DOE's view that the remainder of the Vickers funds should be distributed through public utilities which would be required to pass through the benefits of the refund to ultimate consumers of energy in the area in which the alleged overcharges occurred. The final Decision and Order reserves the question of the proper disposition of the remaining Consent Order funds until after all meritorious Applications for Refund have been paid in the first-stage proceeding, since the most appropriate disposition of the remaining funds may be determined, to a great extent, by the amount of the fund that remains after the first-stage proceeding. The final Decision states that if the remainder is small, it may well be most efficient simply to turn the remainder over to the United States Treasury. *See* 10 CFR 205.287(c). However, the final Decision also states that the second-stage procedure outlined in the Proposed Decision may well be implemented if sufficient funds remain. Therefore, the final Decision solicits further comments on the appropriate disposition of the remainder, if any, of the Consent Order funds after all meritorious claims have been paid. Commenting parties are requested to submit two copies of their comments. Comments should be postmarked on or before August 24, 1981 and should be addressed to the address set forth at the beginning of that notice. All comments received in this proceeding will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, located in Room B–120, 2000 M Street, NW., Washington, D.C., between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays.

Dated: July 17, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 17, 1981.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Petitioner: Office of Enforcement, Economic Regulatory Administration; In the Matter of Vickers Energy Corporation.

Date of Filing: September 5, 1979.

Case Number: DFF–0006.

This proceeding concerns a Petition for the Implementation of Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V. The Petition was filed on September 5, 1979, by the Office of Enforcement of the Economic Regulatory Administration (OE). In its Petition, OE requests the Office of Hearings and Appeals to establish procedures for the disposition of $2,850,000 obtained by the DOE through a Consent Order which was entered into by Vickers Energy Corporation (Vickers) and OE on May 11, 1979. Under the terms of the May 11 Consent Order, Vickers agreed to place $2,850,000 into an escrow account in installments during a twenty-four month period ending July 21, 1981. The $2,850,000 refund amount settles DOE claims that Vickers, a refiner, overcharged its purchasers in sales of motor gasoline from other than company-operated outlets. A different settlement was reached for alleged overcharges made at Vickers' company-operated retail service stations, and that settlement is not involved in this Decision.

The Office of Hearings and Appeals accepted jurisdiction over the OE Petition and agreed to institute special refund procedures for the purpose of compensating purchasers of Vickers motor gasoline that may have been injured as a result of the alleged overcharges. *Office of Enforcement*, 4 DOE ¶ 82,574 (1979).

On February 27, 1981, the Office of Hearings and Appeals issued a Proposed Decision and Order which tentatively established special refund procedures to be used in adjudicating claims to the Vickers settlement amount and solicited comments from interested parties concerning the proper disposition of the Vickers Consent Order funds. 46 FR 15320 (March 5, 1981). In the Proposed Decision, we tenatively established a two-stage refund procedure. We stated that in the first stage of that process the funds would be distributed to qualifed claimants who purchased Vickers motor gasoline during the period covered by the Consent Order, August 19, 1973 through March 1979. In addition, we proposed a second-stage procedure which would apply in the event that the Consent Order funds are not exhausted by claims paid in the first stage of the refund process. In this stage we proposed

that the remaining funds be distributed through public utilities to ultimate consumers in the Vickers marketing area who had not filed claims. These utilities would be directed to use fuel adjustment clauses or other mechanisms to pass through the benefit of the refund to the energy-consuming public in the form of lower utility rates.

The focus of this Decision is the establishment of the procedures to be employed for filing claims in the first stage of the Vickers refund process. This Decision sets forth in detail the types of information that a Vickers customer should submit in order to establish entitlement to a portion of the Vickers Consent Order funds. In establishing these requirements, we will address comments filed in response to the first-stage proposal in the February 27 Proposed Decision. This Decision will also briefly address the second stage of our refund proposal and comments filed in response to that proposal.

I. Background

We described the background surrounding the establishment of the Vickers Consent Order fund in detail in the February 27 Proposed Decision and Order. *Office of Enforcement, Economic Regulatory Administration; In the Matter of Vickers Energy Corporation*, No. DFF-0006, slip op. at 1-3 (February 27, 1981) (proposed decision); 46 FR 15321-22. As we stated in that determination, Vickers Energy Corporation, now a wholly-owned subsidiary of Total Petroleum, Inc., is an independent refiner that owns and operates a refinery in Ardmore, Oklahoma. Vickers markets motor gasoline to branded and nonbranded independent marketers and to other customers in the central region of the United States. The OE investigation which preceded the Consent Order focussed on possible overcharges in Vickers' sales of motor gasoline and other covered products during the period August 1973 through March 1979. Extensive discussions were held concerning the possible overcharges discovered through the OE investigations. The May 11 Consent Order is the result of negotiations and is intended to settle all disputes between the DOE and Vickers with regard to prices charged by the firm in sales of covered products other than crude oil during the period from August 19, 1973 through March 1979. The Consent Order was published in the **Federal Register** for public comment pursuant to 10 CFR § 205.199J(c). See Notice of Proposed Consent Order, 44 FR 29703 May 22, 1979). The DOE considered comments filed in response to the **Federal Register** notice, and ultimately issued the Consent Order without modification. *See* Notice of Final Action Taken, 44 FR 48751 (August 20, 1979).

In the Consent Order, OE and Vickers stipulated that they are unable to readily ascertain the identity of persons who may be entitled to refunds as a result of alleged overcharges by Vickers, or the amounts of refunds that such persons are entitled to receive. *See* Notice of Proposed Consent Order, 44 FR 29703 (May 22, 1979); Notice of Final Action Taken, 44 FR 48751 (August 20, 1979). Consequently, Vickers and the Office of Enforcement agreed in the May 11 Consent Order to the following actions to remedy any violations of DOE price ceiling regulations that may have occurred. First, the parties agreed that Vickers would reduce by $14,000,000 the amount of unrecouped increased product costs otherwise available to the firm as of March 1979, the last month of the audit period. Secondly, the parties agreed that with respect to its retail sales of motor gasoline through its own, company-operated stations, Vickers would reduce prices in its marketing areas in order to implement a total refund to its retail customers in the amount of $6,300,000, including interest. Finally, the parties agreed that with respect to Vickers' nonretail sales of motor gasoline and its retail sales other than through company-operated stations, Vickers would pay a total amount of $2,850,000 over a 24-month period ending July 21, 1981, into an interest-bearing escrow account from which funds may be disbursed only by order of the DOE. The Consent Order further provides that the $2,850,000 refund amount shall be distributed pursuant to 10 CFR, Part 205, Subpart V.

The February 27 Proposed Decision issued by the Office of Hearings and Appeals tentatively established a two-stage special refund procedure for the Vickers Consent Order funds. In the first stage, purchasers of Vickers motor gasoline during the relevant period who believe they are eligible for a portion of the Consent Order funds could file Applications for Refund pursuant to 10 CFR 205.283. These applications would be analyzed and determinations would be reached on the merit of each application. Then all meritorious claims would be paid. The remainder of the Consent Order funds, if any, would be distributed in a manner which would provide restitution to those purchasers of Vickers motor gasoline during the relevant period who were harmed by the alleged violation, but who were unable for some reason to quality for a refund in the first stage. This latter group would include, for example, individual consumers who lacked adequate records of the Vickers motor gasoline transactions involved.

The February 27 determination proposed that in order to establish an entitlement to a refund, a purchaser identifying itself as an injured party must demonstrate initially that it purchased a specific quantity of motor gasoline from Vickers or from an entity which sold Vickers motor gasoline during the relevant time period (August 1973 through March 1979). We stated that privity with Vickers need not be established; evidence need only be presented that the motor gasoline purchased was initially marketed by Vickers. In addition, we determined that unless the purchaser is an ultimate consumer, it must demonstrate that it did not pass on cost increases implemented by Vickers during that period to its own customers. We noted that purchasers who resold Vickers motor gasoline must show, for example, that market conditions did not permit them to raise prices charged to downstream customers, and that as a result they were forced to absorb any cost increases incurred. In the absence of that showing, we would be unable to conclude that the reseller was injured in anyway by the alleged overcharge. We stated that refunds to qualifying purchasers would be made on a volumetric basis—*i.e.*, the refund would be based on the proportion of motor gasoline purchased by the applicant to the total amount of motor gasolime marketed by Vickers through other than company-operated outlets during the relevant period.

We stated that applications should provide all relevant information pertaining to a claim for refunds of alleged overcharges resulting from purchases of Vickers motor gasoline, including the type of information described above concerning the date and place of purchase, the retention of increased costs, and information reflecting the extent of any injury incurred, including the price and volume of product purchased.

We further stated that before disposing of any of the funds received from Vickers, we would provide the maximum possible notice of the distribution process and the opportunity to file claims. We noted that in addition to publishing notice in the **Federal Register**, notice would be provided in newspapers and trade journals in the area in which Vickers markets its motor gasoline. We stated that direct mail notice would be provided to Vickers' direct customers who may have been affected by the possible overcharges. We stated in addition that notice would be provided to business and consumer organizations in the area in which Vickers distributed its motor gasoline during the period covered by the Consent Order. As a final matter, we noted that refund applications filed on behalf of groups of claimants identifying themselves as adversely affected purchasers would be considered, and that applications that are submitted on behalf of groups of purchasers would be evaluated on a case-by-case basis.

In a separate section of the February 27 Proposed Decision, we considered ways of distributing any funds remaining after appropriate refunds to claimants had been made. We proposed that this second-state refund to consumers who may have been overcharged be effected by using rate-regulated utilities to pass through the remaining funds to consumers through fuel adjustment clauses or other appropriate mechanisms.[1]

[1] According to information submitted by OE, the Vickers activities covered by the Consent Order involved sales of motor gasoline in an eight-state region. We observed that it is likely that persons who purchased motor gasoline in a particular area also reside there as well, and are ultimate consumers of natural gas and electricity to provide energy for their homes and apartments. Consequently, we determined that any portions of the Vickers refund amount remaining after claims are paid should be distributed directly to the types of organizations that are required by appliable law to pass through the benefits of the refund to ultimate consumers of energy in the relevant area in which the motor gasoline pricing violations are likely to have occurred. We stated that this plan of distribution can be accomplished in the relevant area by public utilities which have fuel adjustment clauses or other mechanisms requiring the passthrough of a refund to ultimate consumers, and that the public utilities which would receive the refunds for passthrough purposes could include municipally-owned utilities, natural gas distribution utilities that sell natural gas at retail, and electric

Continued

II. Analysis

A. Initial Refund Procedure

In the Proposed Decision, we described our proposal to achieve restitution to identifiable purchasers of Vickers motor gasoline through the first stage of these refund procedures. The Proposed Decision set forth the general elements of the first stage procedure, *i.e.*, the filing and processing of Applications for Refund. In the present Decision, we set forth the specific procedure we will follow in this stage. We are also aware of the need to specify clearly the information that should be submitted to this Office in order for a Vickers customer to qualify for a refund. In addition, we will address specific suggestions made in comments filed in response to those portions of the Proposed Decision which concern the implementation of the first stage of the Vickers refund process.

Vickers and other firms have indicated in their comments that the area in which it marketed its motor gasoline includes a total of sixteen states (Arizona, Arkansas, Colorado, Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wisconsin). *See, e.g.*, Comments filed by Vickers Energy Corporation (June 2, 1981).[2] It should be emphasized, however, that we will consider an Application for Refund from any person who purchased Vickers motor gasoline during the period August 19, 1973 through March 1979, no matter where the purchase occurred.

Vickers has also requested two modifications of the provisions of the Proposed Decision. The firm notes that the modifications it requests would conform to specified portions of the Consent Order. First, Vickers requests that the first-stage procedure include a requirement that any recipient of a refund from the Consent Order funds waive its private right to bring a lawsuit for damages resulting from alleged overcharges by Vickers during the period covered by the Consent Order. Secondly, the firm requests that the entire Consent Order fund be distributed to eligible refund applicants in the first-stage proceeding.

In order to encourage voluntary settlements between parties to DOE enforcement actions, this Office will generally follow the terms of the Consent Order involved in the specific proceeding before the Office, and will permit modifications of those provisions under "extraordinary circumstances" only. *See Richards Oil Co.*, 7 DOE ¶ 82,015 at 84,580 (1981), *citing United States v. Armour & Co.*, 402 U.S. 673, 681–83 (1971).

We note, however, that the Consent Order itself recognizes that its terms are not intended to be inflexible. The Consent Order states that "the Office of Enforcement and Vickers agree that the following procedures for administering the escrow account are most consistent with the impact upon Vickers intended by the Consent Order and the public policy interest of resolving the matters involved in this Consent Order in the most expeditious manner." May 11 Consent Order at 20. Thus, it is clear that the procedures subject to this condition are not binding upon the Office of Hearings and Appeals, but rather are presented "in the petition [as a] request on behalf of Vickers and [OE] that the Office of Hearings and Appeals adopt these procedures for administering the escrow fund under Subpart V. . . ." *Id.* at 20–21.

Among the procedures which the Consent Order states Vickers and the Office of Enforcement wish us to adopt is a provision that any Vickers purchaser accepting a refund from the Consent Order funds must waive its right to bring a private lawsuit under § 210 of the Economic Stabilization Act, 12 U.S.C. § 1904 note, seeking damages for alleged overcharges by Vickers during the audit period:

> [a]s a condition precedent to any purchaser's eligibility to receive a refund, the purchaser shall be required to waive and release any and all claims and rights it may have against Vickers with respect to any possible violation or violations of any DOE petroleum price regulations which may have been committed in sales of the products covered by this Consent Order during the period covered by this Consent Order.
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> May 11 Consent Order at 20.

In considering whether to incorporate an election of remedies (or waiver) requirement in Subpart V proceedings, we have previously indicated that we will carefully examine a requested provision of this type. For example, in *Conoco, Inc.*, 4 DOE ¶ 82,544 at 85,152 (1979), we rejected a firm's request that an election provision be included where no reference to such a provision was made in the Consent Order. In addition, we observed that the Conoco Consent Order was negotiated as a result of a criminal action in which the firm pleaded *nolo contendere* to a felony charge, making false records, and a misdemeanor charge, violation of Cost of Living Council Regulations. *Id.* We found "wholly unreasonable" Conoco's attempt "to use the [Consent Order] payment which it has been ordered to make in connection with those criminal matters to gain considerable benefits at the expense of the statutory rights of purchasers of its products." *Id.* at 85,152–53. However, the present case is distinguishable from *Conoco*. The proposed election provision is a part of the Consent Order, and no criminal action has been brought. Thus, the proposed election provision is an integral part of the Consent Order, and can be assumed to represent a carefully negotiated compromise concerning Vickers' possible liability for civil violations of the DOE price regulations. *See United States v. Armour & Co.*, 402 U.S. at 681.

For the reasons indicated below, we have decided to adopt the requested Consent Order provision. Adoption of the election provision is appropriate because it is not inconsistent with the purposes of Subpart V, it furthers important policies, and it implements the expressed intent of the Consent Order. Significantly, we believe that the adoption of the type of election provision requested in this case will encourage settlements between DOE and regulated firms. Regulated companies are more likely to be willing to enter into settlements with DOE if we determine that election of remedies provisions may be approved and we adopt the proposed provision. We reach this conclusion because of the effect election provisions may have on a company's potential liability under Section 210. When election of remedies provisions are executed by persons seeking administrative refunds, the regulated company's potential exposure to liability in private damage actions is reduced. Accordingly, approval of the proposed provision which was bargained for by Vickers should foster settlements, and settlements as a general matter are in the public interest because they permit DOE to enforce its regulatory program efficiently and effectively.

Moreover, in fairness to Vickers, the Consent Order's stipulation that the election provision is "most consistent with the impact upon Vickers intended by this Consent Order" should be given substantial weight in our determinations. This statement, of course, is part of the settlement agreement.

Finally, we note that no rights of any injured party would be prejudiced by the adoption of the election provision. Each of the direct purchasers of Vickers motor gasoline will receive a notice of its right to file an Application for Refund under 10 CFR § 205.283 to prove a claim to a portion of the Consent Order funds, and of its right to bring a Section 210 action. We note that the Supreme Court has expressly approved as an appropriate exercise of equitable discretion a similar requirement that an individual who claims a portion of a money judgment obtained by the Equal Employment Opportunity Commission in the context of a Title VII action, 42 U.S.C. § 2000e, be required to relinquish the right to bring a private action under that Act. *General Telephone Co. v. EEOC*, 100 S. Ct. 1698, 1708 & n.15 (1980). *See also United States v. Allegheny-Ludlum Industries, Inc.*, 517 F.2d 826, 860–64 (5th Cir. 1975), *cert denied*, U.S. 944 (1976). A copy of the required election of remedies provision is attached to this Decision as Appendix A, and may be filed at the time an application is submitted. We note, however, that it is not necessary for a claimant to execute an election of remedies provision when filing an Application for Refund. Eligible claimants who have not filed an election of remedies

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utilities. We noted, in general, that we would tend to favor reduction in utility costs for residential users as opposed to commercial users. Since the amount of electricity used by a commercial operation may very well be grossly disproportionate to its motor gasoline use, commercial users would tend to receive an overly large refund.

In the Proposed Decision we cited several advantages to this proposal. We noted that the group of ultimate consumers of natural gas and electricity in the area where the alleged overcharges occurred bears a close relationship to the consumers who will not be likely to file individual claims. In addition, we stated that this proposal is very desirable from a standpoint of administrative efficiency, since it may be implemented quickly and economically, is orderly, and can be easily monitored. We set forth our tentative determination that this proposal represents an appropriate balancing of the costs and benefits involved in effectuating restitution to a group of consumers corresponding to the group actually injured.

[2] In addition, Vickers indicates that, contrary to a statement in the Proposed Decision, the firm did not directly sell motor gasoline to the towns of Ardmore, Oklahoma of Kingman, Kansas during the period covered by the Consent Order.

provision will be notified of the approved amount of their refunds, and a comparable statement must then be executed before payment is authorized.

Vickers' second contention is that, as part of the first-stage distribution process, we should adopt a provision contained in the Consent Order specifying that all funds in the escrow account be divided among those purchasers whose applications for refund have been granted.[3] Thus, if the requested provision were adopted, no second-stage procedure would be necessary. We are unable to agree at this time with Vickers' contention that adoption of that provision is "consistent with sound public policy." Caution is advisable, since our experience with these procedures is limited. We can envision that, under some circumstances, it would be inconsistent with Subpart V's purpose of providing restitution to as many injured customers of Vickers as possible simply to divide the Consent Order funds among eligible purchasers. For example, if very few claimants apply and establish eligibility for refunds under the Consent Order provision, each claimant's share could be many times greater than its actual injury. We believe such a distribution would be inequitable.

Consequently, at this stage of the proceeding, it would be premature to indicate whether the entire Consent Order fund will be distributed to those who file Applications for Refund. It may well be the case that the entire fund will be so distributed. However, if an insufficient number of meritorious applications are received, we may well conclude that a second-stage distribution scheme, such as the one outlined in the Proposed Decision or involving payment to the U.S. Treasury, is necessary to effect restitution to injured purchasers of Vickers motor gasoline. That determination cannot be made until the first-stage distribution procedure is completed.

May 11 Consent Order at 20.

We now turn to the question of what types of showing should be required on the part of a claimant in order to establish eligibility for a portion of the Consent Order funds. In the Proposed Decision, we stated that a claimant must establish, at a minimum, that it purchased Vickers motor gasoline at other than a Vickers company-operated retail service station during the applicable period, and that it did not pass through any of the alleged overcharge to its customers. Some of the comments addressed to this issue state that this showing is too difficult to make. They state that this requirement amounts to the establishment of a presumption that such claimants did, in fact, pass through the price increases involved and were therefore not injured. See Comments filed by Crest Petroleum Corp. (April 7, 1981); Comments filed by Senator Edward Zorinsky (April 29, 1981). Those comments argued that the nature of the showing necessary was too complicated and adequate records do not generally exist to support such a showing. We believe that these comments raise an important issue, and we have carefully considered these concerns in adopting standards in this Decision. We will establish a threshold level of purchases under which applicants, primarily smaller firms and individuals, need not make a detailed showing of actual injury. With respect to Applications for Refund claiming purchase volumes less than an average of 50,000 gallons of motor gasoline per month for the period for which a refund is claimed, the only proof required will be of the amount of Vickers motor gasoline purchased by the applicant during the period August 19, 1973 through March 1979. If the full 50,000 gallon monthly volume was purchased during the entire period covered by the Consent Order, the applicant would be entitled to a refund amount of approximately $6,756, assuming an overall refund per gallon of Vickers motor gasoline purchased of $0.002002.[4] Our knowledge of gasoline marketing indicates that a requirement that relatively small purchasers of motor gasoline establish that they did not pass through Vickers' price increases would prove too great a burden on those firms' recordkeeping and accounting capabilities. However, with respect to purchasers of Vickers motor gasoline that claim a refund for purchases exceeding an average of 50,000 gallons per month for the period for which a refund is claimed, *i.e.*, above the $6,756 level for the entire period, a showing that those firms did not pass through the price increases to their own customers will be required. That requirement is not unfairly burdensome, in light of the larger size of those firms, their presumably greater sophistication and accounting capabilities, and of the DOE's preexisting recordkeeping requirements under 10 CFR § 210.92 (repealed March 30, 1981), which required this type of material to be maintained. We note that those purchasers whose average monthly purchase during the period for which a refund is claimed exceeds 50,000 gallons but who cannot establish that they did not pass through the price increases are nevertheless eligible for a refund for purchases not exceeding 50,000 gallons per month.

We will exclude two groups of purchasers from the first-stage refund process. First, we will not consider Applications for Refund from retail service stations operated by Vickers or from customers of those stations, since those parties were not intended to benefit from the Consent Order fund addressed in this Decision and refunds through those outlets were separately established in the Consent Order. Secondly, we will not consider Applications for Refund from firms who made only spot market purchases of Vickers motor gasoline. We believe that those customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of Vickers motor gasoline at increased prices unless they were able to pass through the full amount of Vickers' quoted selling price at the time of purchase to their own customers. Thus, those spot market purchasers as a group would not have incurred injury as a result of the Vickers alleged regulatory violations, and should not be permitted to benefit from the Consent Order.

With respect to applicants that purchased less than an average of 50,000 gallons per month of Vickers motor gasoline during the period for which a refund is claimed, we will require only proof of purchase of the claimed volume of Vickers motor gasoline. With respect to applicants claiming a purchase volume greater than that amount, we will require a showing that the purchaser did not pass through the price increases to its own customers. Retailers and resellers in the second group should submit data showing the applicant's unrecouped increased product costs (bank) for each calendar quarter for which the firm claims a refund. If the applicant used its banked costs to increase its selling price at a later date, the firm's refund may be appropriately reduced. We note that even if a firm's bank was reduced to zero during the period covered by the Consent Order, it may nevertheless be possible for the firm to establish eligibility for a refund by showing that during that period, market forces reduced its sales and compelled the applicant to purchase a smaller volume of motor gasoline, and consequently to sell a smaller volume of that product, with correspondingly declining profits. With respect to any commercial enterprise which purchased Vickers motor gasoline other than through company-operated retail outlets, and was not subject to the Mandatory Petroleum Price Regulations during the Consent Order period, we will require proof of purchase of the claimed volume of Vickers motor gasoline and a statement describing the way in which the applicant used the motor gasoline.

Accordingly, this Decision announces that we will accept Applications for Refund from the Vickers Consent Order amount pursuant to 10 CFR 205.283 beginning immediately. Applications must be filed no later than 90 days after the publication of this Decision and Order in the **Federal Register**. It should be noted that in establishing these procedures, we have attempted to avoid excessive processing costs that would be out of proportion to the amount of the Consent Order funds available for distribution. *See* 10 CFR 205.286(b). Consequently, because the cost of considering claims for small refund amounts may render such a process administratively inefficient, we may decide at some point in the future to establish a minimum amount for which an Application for Refund may be filed. That minimum amount could be based upon the administrative cost of processing a claim.

[3] The provision of the Consent Order to which Vickers refers provides as follows: to the maximum extent practicable and consistent with sound public policy, the total amount of the escrow fund, excluding the cost of administration, if any, shall be distributed among the purchasers which the Office of Hearings and Appeals finds to be eligible and which duly apply for a portion of such funds.

[4] According to data submitted by Vickers, the firm sold 1,598,209,232 gallons of motor gasoline during the period covered by the Consent Order. As of July 15, 1981, there will be available for distribution approximately $3,200,000, including interest. For purposes of this Decision, we have apportioned $0.002002 of the fund to each gallon of motor gasoline purchased. However, should the number of eligible claimants result in meritorious claims in excess of the fund, it will be necessary to reduce proportionately the amount refunded per gallon. *See* 10 CFR 205.286(a).

issuing a check and transmitting the check, which may amount to approximately $15.00. However, we will not impose a lower limit at this time, but will consider all Applications for Refund that are timely filed. Refunds will be made on a volumetric basis, according to the amount of Vickers motor gasoline covered by the Consent Order and the amount of the Consent Order fund.[5]

B. Distribution of the Remainder of the Consent Order Funds

Several comments addressed our proposed distribution of the remainder, if any, of the Consent Order funds after all meritorious claims have been paid. Those comments can be divided into two groups. First, some comments contend that the Office of Hearings and Appeals lacks the statutory or regulatory authority to implement the proposed distribution. Secondly, some comments acknowledge that this Office possesses the authority to fashion such a restitutionary mechanism, but offer alternative to or modifications of our original proposal. In this Decision, we are not implementing the second-stage refund procedure. Such a step would be difficult to justify before the analysis and processing of Applications for Refund filed in the first stage of the distribution of the Consent Order funds to claimants, since the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-stage distribution scheme. However, in order for members of the public to be made aware of outstanding issues and be able to comment on them, we will summarize and address briefly the comments received concerning the proposed second-stage procedure. We continue to seek additional comments on these issues.

The major comments filed by the United States General Accounting Office (GAO) allege that the Office of Hearings and Appeals lacks the authority to implement the proposed second-stage refund procedure. Two other comments filed by The Transportation Group and the Air Transport Association also observed the conflict between GAO's position and the February 27 Proposed Decision. See Comments filed by The Transporation Group (April 6, 1981); Comments filed by the Air Transport Association (April 6, 1981).

GAO's position is that the Office of Hearings and Appeals has neither explicit nor implicit authority to implement the second-stage restitutionary mechanism proposed in this case. GAO Comments at 1 (May 1, 1981). GAO states that according to its interpretation of applicable statutory and case law, the DOE has "the power to order a violator of its regulations to make refunds to the customers it had overcharged." *Id., citing* § 209 of the Economic Stabilization Act, 12 U.S.C. § 1904 note, and *Bonray Oil Co. v. DOE*, 472 F. Supp. 899 (W.D. Okla. 1978), *aff'd per curiam*, 601 F. 2d 1191 (Temp. Emer. Ct. App. 1979). GAO further states that DOE "can effect restitution only to injured consumers of oil company products." GAO Comments at 2. GAO concludes that, after paying all meritorious claims for portions of the Vickers Consent Order funds, the Office of Hearings and Appeals "can only deposit [the remainder] in the Treasury to be held for a period of time for the benefit of possible claimants, and ultimately to be placed in the general fund." *Id.*

We believe that GAO's position represents an overly narrow interpretation of DOE's restitutionary powers. The Temporary Emergency Court of Appeals has stated that § 209 of the Economic Stabilization Act has an extremely broad purpose and that the court did not "believe that Congress intended to limit the agency's and courts' power to restore overcharges" by enacting § 209 of the Economic Stabilization Act. *Sauder v. DOE*, 3 Fed. Energy Guidelines (CCH) ¶ 26,293 at 28,273 (Temp. Emer. Ct. App., 1981). The court further stated that "[t]here is no indication . . . [§ 209] . . . attempts to limit the power of the courts or the agency to restitution or to a particularly strict interpretation of restitution." *Id.* Thus, we continue to believe that DOE's statutory authority to effect restitution permits the agency to consider far-reaching alternatives, and that the proposed second-stage procedure is clearly authorized by applicable statutory and regulatory provisions.

Several comments addressed the question of the most appropriate distribution method for the remainder of the Vickers Consent Order funds. Since we are not deciding that question in this Decision, we continue to request comments from interested parties on that issue. It may well be the case that, after the first refund stage is completed, the remainder of the funds may be so small as to make a second-stage distribution impractical. In that case, we may simply turn over the remainder to the United States Treasury. *See* 10 C.F.R. § 205.287(c). *See, e.g., Sharon Heights Shell*, 6 DOE ¶ ——, No. BRO–1311, slip op. at 5–8 (June 5, 1981). Depositing the remainder of the Consent Order funds directly into the United States Treasury has several advantages as a distribution scheme. Such an alternative would involve virtually no administrative expenses. Also, if the Treasury were to receive the money, the refund proceeds could conceivably, either now or at some future point, be added to general Treasury revenues, or reduce the need for borrowing to some extent, thereby benefiting the class of people injured by the alleged overcharges. The second stage alternative we had previously proposed has two advantages. First, the nature of the benefits we proposed to confer would be more closely correlated with the nature of the injuries incurred than would be the case with a Treasury refund. The injuries caused by the alleged overcharges resulted from increased energy costs in a limited geographic area. We had therefore proposed to provide restitution of the amount remaining after the first stage claims have been paid in the form of lower energy or energy-related costs in that limited area, rather than in the form of decreased taxes or increased government services to the public at large. Secondly, the amount of the benefits we had proposed to confer to consumers in the Vickers marketing area would be more closely correlated with the amount of injury those consumers incurred than a Treasury refund. Consumers were actually injured in a limited area in the central United States by the alleged overcharges in proportion to their usage of refined products, and the second-stage alternative we proposed involves a form of restitution which would operate in proportion to their consumption of energy in that area. In contrast, a Treasury refund may benefit certain unrelated classes of people, since the benefits each individual receives from government expenditures has no discernible correlation with his or her relative energy consumption, and many of those who would benefit from a Treasury refund do not live in the area in which the alleged regulatory violations occurred. Thus, if sufficient funds remain, we continue to believe that a method of restitution more direct than disbursement of the Treasury has evident advantages.

One Comment we received suggested distributing the remaining funds for "energy assistance to economically disadvantaged persons." Comment filed by Illinois Association of Community Action Agencies (April 20, 1981). Such a distribution scheme, however, would not return the funds to parties in relation to the injury sustained. As we observed in the Proposed Decision, our purpose is to "effectuate restitution to any injured consumer * * *, regardless of income level." February 27 Proposed Decision, 46 FR 15324 n.3. Thus, the Illinois Association's proposal, while reflecting important social goals, is not consistent with the purpose of Subpart V.

In its Comments, the Mid-Atlantic Legal Foundation describes the second-stage proposal as "one equitable way to distribute the final sum." Comments filed by the Mid-Atlantic Legal Foundation at 3 (April 9, 1981). The Comment describes the proposal as "capable of quick and economical implementation as well as easy monitoring." *Id.* at 4. However, the Comment, without suggesting a specific alternative plan, states that "there may be more equitable ways or repayment to the market place in which the overcharges arose" in cases of very large overcharges. *Id.* We certainly encourage any interested party to submit such a plan.

The New York State Energy Office and Office of Attorney General have suggested in their Comments, which amplify Comments submitted previously by the States of New York, Indiana, and Iowa, that the remainder of the Consent Order funds be turned over to the sixteen States involved to fund activities by these States which would benefit motor gasoline users. Comments filed by New York State Energy Office and Office of Attorney General (April 9, 1981). That position is also supported by the State of Minnesota. Comments filed by the Attorney General, State of Minnesota (May 27, 1981). Those State activities would include support of the vehicle emissions inspection and maintenance programs, the gasoline quality testing program, and other programs. We do not at this stage wish to preclude such a distribution. We note that we have proposed a similar distribution scheme which has some comparable features in a consolidated proceeding concerning crude oil producer overcharges. *See Office of Enforcement, Economic Regulatory Administration, In the*

[5] *See* note 4 *supra.*

Matter of Alfred B. Alkek et al., 46 FR 26691 (May 14, 1981).

The Comments received from New York State also point out that there exists a potential for disproportionate recovery by certain consumers through the fuel adjustment clause mechanism proposed. The Comments content that if the refund passthrough results in a simple percentage decrease in electric or gas bills, then a consumer using electric or gas heat may received a refund more than three times as large as the refund received by a consumer using oil heat. New York Comments at 23. The State contends further that since gas is used primarily for heating and is not used by all consumers, refunds through electric utilities may be more equitable. *Id.* at 3. In addition, the State suggests that in order to overcome the unequal recovery problem described above, the refund be made not as a percentage decrease, but as bill reductions of a single fixed sum to all consumers. *Id.* While we are not convinced that the utility passthrough scheme is impracticable, there appears to be considerable merit to New York's suggestions, and any such scheme implemented in a Supplemental Order will certainly have to address them.

III. Conclusion

The refund mechanisms and procedures outlined above for claims filed with the DOE will be adopted. Although we continue to believe that the plan for distribution of the remainder of the consent order funds outlined in the Proposed Decision is authorized by the DOE's statutory and regulatory provisions, and represents an equitable and efficient method of restitution, we have concluded that it would be premature at this time to authorize the implementation of that second-stage procedure. Because the most efficient distribution of the remainder of the Consent Order funds will be dictated, in large part, by the amount of the fund remaining after all eligible claims are paid, we will consider the question after all such claims are paid. That determination will be made in the form of a Supplemental Order, notice of which will be provided through the **Federal Register.**

We will therefore accept Applications for Refund of a portion of the Vickers Consent Order funds filed within 90 days after the publication of this Decision and Order in the **Federal Register.** *See* 10 CFR 205.283. We will consider all applications, although we may later impose a lower dollar limit on claims. *See* 10 CFR 205.286(b). Applications made on behalf of a class of claimants will be considered on a case-by-case basis. Our evaluation of class applications will be guided by Federal Rule of Civil Procedure 23, which governs class actions in federal courts. An application must be in writing, signed by the applicant, and specify that it pertains to the Matter of Vickers Energy Corporation, Case No. DFF–0006. Any application for a refund in excess of $100 must be filed in duplicate, and a copy of that application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, NW., Washington, D.C. Any applicant who believes that his application contains confidential information must so indicate on the first page of his application and submit two additional copies of his application from which the information that the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application shall indicate whether the applicant or any person acting on his instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying enforcement proceeding. Each application shall also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. § 1001. It is not necessary to execute an election of remedies available under § 210 of the Economic Stabilization Act, 12 U.S.C. § 1904 note, in order to file an Application for Refund. However, the election statement must be executed prior to payment by the DOE of any refund to an applicant. All applications should be sent to: Vickers Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Code RF1, 2000 M Street, NW., Washington, D.C. 20461. All Applications for Refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

In order to assist applicants in establishing eligibility for a portion of the Consent Order funds, the following section discusses the showings that should be made by resellers, retailers and end-users of Vickers motor gasoline. A sample format for submitting this information is attached as Appendix B. Use of that format is not required, and any Application for Refund that conforms to the filing requirements set forth above and contains the information described below will be processed.

1. *Resellers (e.g.,* jobbers): (i) An applicant must present evidence that it purchased motor gasoline from Vickers at some point during the period August 19, 1973 through March 1979. Vickers has supplied the DOE with a customer list specifying all such customers and their purchase volumes. Resellers that appear on Vickers' customer list will be notified of the volume that Vickers' records show was purchased by that reseller. If the reseller agrees with Vickers' figures, it is not necessary to show further proof of purchase. If the reseller disagrees with Vickers' figures, the reseller must submit evidence, *e.g.,* invoices, to support its claim of a different volume amount. If the reseller did not purchase motor gasoline directly from Vickers, the reseller must submit similar evidence to establish proof of purchase. (ii) If the applicant purchased an average of 50,000 gallons of Vickers motor gasoline or less per month during the period for which a refund is claimed, no further showing is required. If the applicant claims a refund for an average monthly volume greater than 50,000 gallons during the Consent Order period, the applicant must show that it was unable to pass through the price increases to its customers and was forced to add the increase to its unrecouped increased product costs (bank). Such an applicant must further show that it did not use those banked costs resulting from Vickers' price increase to increase its selling prices at any time. We require such an applicant to submit the amount of its actual quarterly cost banks for the period for which it claims a refund.

2. *Retailers (e.g.,* service stations): (i) An applicant must present evidence that it purchased motor gasoline from Vickers during the period August 19, 1973 through March 1979. If the applicant purchased motor gasoline directly from Vickers, and agrees with the volume that Vickers reported to the DOE, the applicant need not present further proof of purchase. If such an applicant disagrees with Vickers' volume report, or if the applicant purchased Vickers motor gasoline not directly from Vickers but through a reseller, the applicant must present evidence of purchase, *e.g.,* invoices. (ii) If the applicant purchased an average monthly volume of 50,000 gallons or less of Vickers motor gasoline during the period for which a refund is claimed, no further showing is required. If the applicant claims a refund for a volume greater than an average monthly volume of 50,000 gallons during the Consent Order period, the applicant must show that it was unable to pass through the price increases to its customers and was forced to add the increase to its unrecouped increased product costs (bank). Such an applicant must further show that it did not use those banked costs resulting from Vickers' price increase to increase its selling prices at any time. We require such an applicant to submit its actual quarterly cost banks for the period for which it claims a refund.

3. *End-users:* (i) An applicant must present evidence that it purchased Vickers motor gasoline during the period August 19, 1973 through March 1979. That evidence cannot merely state that such purchases were made. It must include some tangible proof of purchase, *e.g.,* invoices or credit card receipts. (ii) Commercial enterprises must describe the way in which the motor gasoline was used.

It is therefore ordered that:

The refund amount provided by Vickers Energy Corporation in accordance with the May 11, 1979 Consent Order will be distributed in the manner set forth in the foregoing Decision.

Dated: July 17, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix A

Election of Remedies Provision

In consideration of the sum of money obtained through Subpart V proceedings before the Office of Hearings and Appeals of the Department of Energy in Case No. DFF–0006, I, _____ (give name), with full knowledge of the provisions of § 210 of the Economic Stabilization Act, 12 U.S.C. § 1904 note, and my rights thereunder, expressly waive and release any and all rights under that section to bring a private action against Vickers Energy Corporation for alleged overcharges in transactions that occurred between August 19, 1973 and March 31, 1979 in any products covered by the Consent Order entered into between the Department of Energy and Vickers Energy Corporation on

May 11, 1979. Section 210 permits me to bring an action for damages, including an action for treble damages in the case of a willingful violation, for any prices charged by my supplier of motor gasoline in excess of the prices permitted by the Mandatory Petroleum Price Regulations. Notice to my supplier may be necessary prior to my bringing an action under § 210. My right to bring an action under § 210 expires on September 30, 1981 with respect to any act committed or liability incurred on or after that expiration date. My right to bring such an action may also be limited by the statute of limitations applicable to such actions.
(Signature) _____
(Date) _____

Appendix B

Suggested Format for Application for Refund

1. Name of Applicant: _____
Address: _____
Contact Person: _____
Phone Number: _____
Nature of Gasoline Operations: _____
(circle applicable term) Reseller Retailer End-user
2. Name of Supplier: _____
Address: _____
Contact Person: _____
Phone Number: _____
Was product branded? _____
If so, brand name: _____
3. Volume and Price of Vickers Motor Gasoline Purchased by Month: _____
August 19, 1973-December 31, 1973: _____
1974: _____
1975: _____
1976: _____
1977: _____
1978: _____
January 1, 1979-March 31, 1979: _____
4. If commercial end-user, specify use of gasoline: _____

5. Complete the following section only if you are claiming a refund for a volume amount greater than 50,000 gallons of motor gasoline per month during the period for which you seek a refund. The data provided in this section should include only the "banked" costs which were available for passthrough in sales of motor gasoline:
Unrecouped increased product costs, September 30, 1973: _____
Unrecouped increased product costs, December 31, 1973: _____
Unrecouped increased product costs, March 31, 1974: _____
Unrecouped increased product costs, June 30, 1974: _____
Unrecouped increased product costs, September 30, 1974: _____
Unrecouped increased product costs, December 31, 1974: _____
Unrecouped increased product costs, March 31, 1975: _____
Unrecouped increased product costs, June 30, 1975: _____
Unrecouped increased product costs, September 30, 1975: _____
Unrecouped increased product costs, December 31, 1975: _____
Unrecouped increased product costs, March 31, 1976: _____
Unrecouped increased product costs, June 30, 1976: _____
Unrecouped increased product costs, September 30, 1976: _____
Unrecouped increased product costs, December 31, 1976: _____
Unrecouped increased product costs, March 31, 1977: _____
Unrecouped increased product costs, June 30, 1977: _____
Unrecouped increased product costs, September 30, 1977: _____
Unrecouped increased product costs, December 31, 1977: _____
Unrecouped increased product costs, March 31, 1978: _____
Unrecouped increased product costs, June 30, 1978: _____
Unrecouped increased product costs, September 30, 1978: _____
Unrecouped increased product costs, December 31, 1978: _____
Unrecouped increased product costs, March 31, 1979: _____

I understand that it is a crime for any person knowingly and willingly to make any false, fictitious or fradulent statements in this application. I swear (or affirm) that the information submitted herein is true and accurate to the best of my knowledge and belief.
(Signature of Applicant or Authorized Representative) _____
Date _____

[FR Doc. 81-21655 Filed 7-23-81; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-1893-8]

Availability of Environmental Impact Statements

AGENCY: Office of Federal Activities (A-104), U.S. Environmental Protection Agency.

PURPOSE: This notice lists the environmental impact statements (EIS's) which have been officially filed with the EPA and distributed to Federal agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's regulations (40 CFR Part 1506.9) during the week of July 13, 1981 to July 17, 1981.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this notice is calculated from July 24, 1981 and will end on September 8, 1981. The 30-day review period for final EIS's as calculated from July 24, 1981 will end on August 24, 1981.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this notice you should contact the Federal agency which prepared the EIS. If a Federal agency does not have the EIS available upon request you may contact the Office of Federal Activities, EPA, for further information. Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following source: Information Resources Press, 1700 North Moore Street, Arlington, Virginia 22209, (703) 558-8270.

FOR FURTHER INFORMATION CONTACT: Kathi L. Wilson, Office of Federal Activities, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 245-3006.

Dated: July 21, 1981.

William N. Hedeman, Jr.,
Director, Office of Federal Activities (A-104).

Department of Agriculture

SCS: Final—Moss Neck Watershed Flood Protection, Robeson County, North Carolina (EIS Order #810555)

Army Corps of Engineers

Draft—Horn Lake Creek and Tributaries, Flood Control, DeSoto County, Mississippi and Shelby County, Tennessee (EIS order #810561)
Final Supplement—Virginia Beach Streams Canal #2, Flood Control, Virginia (EIS Order #810556)
Report—James River Basin Flood Protection, Henrico and Hanover Counties, Virginia (EIS Order #810559)
Report—Virginia Coast Waterway, Virginia (EIS Order #810562)

Department of the Army

Draft—West Point Military Academy, Ongoing Operation, Orange County, New York (EIS Order #810558)

Health and Human Services

FDA: Final—FDA Headquarters Laboratory Facilities, Prince George's County, Maryland (EIS Order #810557)

Department of Housing and Urban Development

Final—Colby Lake Development, Mortgage Insurance, Washington County, Minnesota (EIS Order #810554)
104H: Final—Seaport Marketplace Restoration/Renovation, New York County, New York (EIS Order #810563)

Department of Transportation

FHWA: Final—FH-27, Beltrami County Road 39 to TH-6, Chippewa National Forest, Beltrami and Itasca Counties, Minnesota (EIS Order #810565)
FHWA: Final—US 3/NH-11 Relocation, Franklin to Laconia, Merrimack and Belknap Counties, New Hampshire (EIS Order #810564)

Federal Energy Regulatory Commission

Draft—Florida Pipeline System, Natural Gas Curtailment, Florida (EIS Order #810560)

[FR Doc. 81-21732 Filed 7-23-81; 8:45 am]

BILLING CODE 6560-37-M

[FRL-1894-2]

Intent To Prepare an Environmental Impact Statement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) on the H. W. Pirkey Power Plant and the South Hallsville surface lignite mine.

PURPOSE: To fulfill the requirements of Section 102(2)(C) of the National Environmental Policy Act. EPA is preparing an EIS and, therefore, publishes this Notice of Intent in accordance with 40 CFR 1501.7.

FOR FURTHER INFORMATION CONTACT: Mr. Clinton B. Spotts, Regional EIS Coordinator, U.S. EPA, Region, VI, 1201 Elm Street, Dallas, Texas 75270, Telephone: (214) 767-2716 or (FTS) 729-2716.

Summary

The EPA, Region VI, has distributed to the public a detailed Notice of Intent, dated July 10, 1981 on EPA's action regarding its New Source National Pollutant Discharge Elimination System (NPDES) permits. Copies of the detailed Notice are available from the Regional EIS Coordinator identified above.

Scoping

EPA will hold a public meeting to determine the scope of the Draft EIS on August 18, 1981 at 7:30 p.m. at the Marshall High School, 1900 Maverick Drive, in Marshall, Texas. EPA invites full participation by individuals, private organizations, local, State, and Federal agencies. The public will be involved to the maximum extent possible and encouraged to participate in the planning process.

EPA estimates the Draft EIS will be available for public review in approximately five (5) months. All interested parties are encouraged to submit their name and address to the person indicated above for inclusion on the mailing list.

Dated: July 21, 1981.

William N. Hedeman, Jr.,

Director, Office of Federal Activities.

[FR Doc. 81-21733 Filed 7-23-81; 8:45 am]

BILLING CODE 6560-37-M

FEDERAL RESERVE SYSTEM

Bank Holding Company; Proposed de Novo Nonbank Activities

The bank holding company listed in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 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 the application, 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 interest, or unsound banking practices." Any comment on the 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.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for the application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than August 14, 1981.

Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South La Salle Street, Chicago, Illinois 60690: MID-CONTINENTAL BANCORPORATION, INC., Milwaukee, Wisconsin (insurance activities; Wisconsin): to engage, through its subsidiary, Continental Banks Insurance Services, Inc., in the sale of insurance directly related to extensions of credit including credit life, credit disability, mortgage life, mortgage disability, automobile, homeowners and physical damage insurance and unemployment and loss of income insurance and the sale of fire and property damage, general liability, automobile, and directors and officers liability insurance for Applicant's banking subsidiaries. These activities would be conducted from offices located at 3315 West Villard Avenue, Milwaukee, Wisconsin, 131 West Layton Avenue, Milwaukee, Wisconsin, 7600 West Hampton Avenue, Milwaukee, Wisconsin, and 735 West Wisconsin, Milwaukee, Wisconsin, serving the metropolitan Milwaukee area.

Other Federal Reserve Banks. None.

Board of Governors of the Federal Reserve System, July 20, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-21705 Filed 7-23-81; 8:45 am]

BILLING CODE 6210-01-M

Citizens Dimension Bancorp, Inc.; Formation of Bank Holding Company

Citizens Dimension Bancorp, Inc., Muskogee, Oklahoma, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of Citizens National Bank and Trust of Muskogee, Muskogee, Oklahoma. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 19, 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, July 20, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-21702 Filed 7-23-81; 8:45 am]

BILLING CODE 6210-01-M

CTS Bancorp.; Formation of Bank Holding Company

CTS Bancorporation, Eldridge, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Central Trust and Savings Bank, Eldridge, Iowa. The factors that are considered in acting

on the application are set forth in section 3(c) of the Act (12 U.S.C 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 16, 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, July 17, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-21674 Filed 7-23-81; 8:45 am]

BILLING CODE 6210-01-M

First National Financial Corp.; Formation of Bank Holding Company

First National Financial Corp., Athens, Georgia, 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 100 per cent of the voting shares of First National Bank of Athens, Athens, Georgia. 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 Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 16, 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, July 17, 1981.

D. Michael Maines,

Assistant Secretary of the Board.

[FR Doc. 81-21672 Filed 7-23-81; 8:45 am]

BILLING CODE 6210-01-M

Florida National Banks of Florida, Inc.; Acquisition of Bank

Florida National Banks of Florida, Inc., Jacksonville, Florida, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with Alliance Corporation, Jacksonville, Florida. 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 the Federal Reserve Bank of Atlanta. 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 not later than August 19, 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, July 20, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-21673 Filed 7-23-81; 8:45 am]

BILLING CODE 6210-01-M

Packwood Financial, Inc.; Proposed Acquisition of Bakorp, Inc.

Packwood Financial, Inc., Packwood, Iowa, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. section 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire the assets of Bakorp, Inc., Manhattan, Kansas.

Applicant states that the proposed subsidiary would engage in the activities of leasing personal property and acting as agent or broker for the sale of general insurance in a town with a population of less than 5,000. These activities would be performed from offices of Applicant's subsidiary in Packwood, Iowa, and the geographic areas to be served are the following Iowa towns: Packwood, Ollie, Pekin, Abingdon, Richland, Martingsburg, Hyland Center and Batavia, such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received no later than August 16, 1981.

Board of Governors of the Federal Reserve System, July 17, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-21676 Filed 7-23-81; 8:45 am]

BILLING CODE 6210-01-M

Sheridan Bancorp, Inc.; Formation of Bank Holding Company

Sheridan Bancorp, Inc., Sheridan, Illinois, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Sheridan State Bank, Sheridan, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 16, 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, July 17, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-21677 Filed 7-23-81; 8:45 am]

BILLING CODE 6210-01-M

Twin Cities Financial Services, Inc.; Formation of Bank Holding Company

Twin Cities Financial Services, Inc., Maryville, Tennessee, 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 100 percent of the voting shares of Citizens Bank of Blount County, Maryville, Tennessee. 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 Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 19, 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, July 20, 1981.

D. Michael Maines,

Assistant Secretary of the Board.

[FR Doc. 81-21703 Filed 7-23-81; 8:45 am]

BILLING CODE 6210-01-M

Union Planters Corp.; Acquisition of Bank

Union Planters Corporation, Memphis, Tennessee, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 95 percent or more of the voting shares of Union Planters Nashville, Nashville, Tennessee. 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 the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than August 16, 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, July 17, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-21873 Filed 7-23-81; 8:45 am]

BILLING CODE 6210-01-M

Wilmont Bankshares, Inc.; Formation of Bank Holding Company

Wilmont Bankshares, Inc., Lismore, Minnesota, 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 82 percent or more of the voting shares of the First National Bank of Wilmont, Wilmont, Minnesota. 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 Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 19, 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, July 20, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-21704 Filed 7-23-81; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 80N-0095]

Headquarters Laboratory Facilities, State of Maryland, Prince Georges County; Availability of Final Environmental Impact Statement

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of a final environmental impact statement (EIS). The document addresses the environmental impact of the agency's proposed master plan to build new laboratory and office facilities and relocate in stages on government-owned land in Beltsville, MD.

ADDRESS: Copies of the final EIS are available from the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William H. Hoffman, Chief, Long Range Facilities Planning Staff (HFA-200), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4432.

SUPPLEMENTARY INFORMATION: Laboratory research is essential to FDA's effectiveness in protecting the public against impure and unsafe food, drugs, cosmetics, and medical devices. Yet, several of the agency's current laboratory facilities are functionally obsolete and beyond renovation. Following a review of alternative sites in the Washington metropolitan area for construction of new laboratory, laboratory support, animal testing, and related facilities, a 244-acre site in Beltsville was selected for construction of the facilities. The proposed site is environmentally valuable for its rural character and ecological diversity. The proposed action would result in the conversion of 90 acres from woodland to laboratory, office, and pasture use, resulting in the removal of part of the existing natural habitat. The existing rural ecologically diverse character of approximately 65 percent of the site would be preserved.

The agency invited community and professional participation in a "scoping" meeting, held September 12, 1979, at Beltsville. The meeting was intended to give all interested parties the opportunity to make known their concerns or comments about the proposed FDA plans and to determine the scope of issues to be addressed before development of a draft EIS. Notice of intent to hold this meeting was published in the **Federal Register** (44 FR 47619; August 14, 1979) and in local newspapers circulated in the area of the proposed construction site. Individuals and organizations who might be expected to be interested in the proposed action were personally invited.

A document entitled "Draft Evironmental Impact Statement—Headquarters Laboratory Facilities" was made available to the public (Docket No. 80N-0095, 45 FR 29413; May 2, 1980) and officially filed for public review by the Environmental Protection Agency (EPA) (FRL 1500-3, 45 FR 35003; May 23, 1980).

All comments on the draft EIS have been addressed in the final EIS. All comments received are available for public examination at the Dockets Management Branch at the above address, from 9 a.m. to 4 p.m., Monday through Friday.

A record of decision describing the agency's final conclusions concerning the proposed construction will appear in the **Federal Register** and in local newspapers circulated in the area of the proposed construction site no sooner than 30 days after the date when EPA issues official notice of filing of the final EIS in the **Federal Register** (in accordance with 40 CFR 1506.10). The record of decision shall state the agency's decision and the alternatives and factors which were balanced by the agency in making that decision (see 40 CFR 1505.2 for details).

The final EIS is issued under the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190) (sec. 102(2)(c), 83 Stat. 853 (42 U.S.C. 4321–4347)), the Council of Environmental Quality regulations published in the **Federal Register** of November 29, 1978 (43 FR 55978 to 56007, 40 CFR Parts 1500 to 1508), Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977), and FDA's environmental regulations (21 CFR Part 25).

Dated: June 18, 1981.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 81–21522 Filed 7–23–81; 8:45 am]

BILLING CODE 4110–03–M

National Institutes of Health

Cancer Research Manpower Review Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, September 24–25, 1981, the Bethesda Marriott Hotel, Gaithersburg Room, 5151 Pooks Hill Road, Bethesda, Maryland 20014. The meeting will be open to the public on September 24, from 9:00 a.m. to 10:00 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92–463, the meeting will be closed to the public on September 24, from 10:00 a.m. to adjournment and on September 25, from 9:00 a.m. to adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205, (301/496–5708) will provide summaries of the meetings and rosters of committee members, upon request.

Dr. Leon Niemiec, Executive Secretary, Cancer Research Manpower Review Committee, National Cancer Institute, Westwood Building, Room 10A03, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7978) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Number 13.398, Project grants in cancer research manpower, National Institutes of Health)

(NIH Programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of the Circular)

Dated: July 16, 1981.

Thomas E. Malone,

Deputy Director, NIH.

[FR Doc. 81–21657 Filed 7–23–81; 8:45 am]

BILLING CODE 4110–08–M

National Heart, Lung, and Blood Advisory Council and its Manpower Subcommittee and Research Subcommittee; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, September 24, 25, 26, 1981, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland, 20205. In addition, meetings of the Manpower Subcommittee and the Research Subcommittee of the above Council will be September 23, 1981 at 8:00 p.m. in Building 31, Conference Rooms 9 and 10 respectively.

This meeting will be open to the public on September 24 from 9:00 a.m. to approximately 3:00 p.m., to discuss program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of P.L. 92–463, the meeting of the Council will be closed to the public from 3:00 p.m. on September 24 to adjournment on September 26 for the review, discussion, and evaluation of individual grant applications. The meetings of the Manpower Subcommittee and the Research Subcommittee of the above Council will be closed from 8:00 p.m. to adjournment on September 23, also for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–4236, will provide summaries of the meetings and rosters of the Council members.

Kathleen S. Holcombe, Executive Secretary of the Council, Westwood Building, Room 7A–15, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–7548, will furnish substantive program information.

Date: July 15, 1981.

Thomas E. Malone,

Deputy Director, NIH.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in Section 8(b)(4) and (5) of that Circular.

[FR Doc. 81–21656 Filed 7–23–81; 8:45 am]

BILLING CODE 4110–08–M

Public Health Service, National Toxicology Program; Chemicals (13) Nominated for Toxicological Testing; Request for Comments

SUMMARY: On May 19, 1981, the Chemical Evaluation Committee of the National Toxicology Program (NTP) reviewed 13 new chemicals nominated for toxicological testing and made recommendations as to types of testing to be performed. The evaluation of nominated chemicals by the Committee constitutes an integral part of the NTP chemical nomination and selection process. This notice lists the 13 chemicals evaluated by the Committee and requests public comment on these chemicals.

FOR FURTHER INFORMATION AND SUBMISSION OF COMMENTS, CONTACT: Dr. Dorothy Canter, Assistant to the Director, National Toxicology Program, Room 2b–55, Building 31, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–3511.

SUPPLEMENTARY INFORMATION: As part of the chemical selection process of the National Toxicology Program (NTP), nominated chemicals which have been reviewed by the NTP Chemical Evaluation Committee (CEC) are published with request for comment in the **Federal Register** and *NTP Technical Bulletin*. This enables outside individuals and groups to participate in the NTP evaluation process thereby helping the NTP to make better informed decisions as to whether to select, reject, or defer chemicals for testing.

The comments and data supplied as a result of this request for information are reviewed and summarized by NTP technical staff and made available to both the NTP Board of Scientific Counselors for its evaluation of nominated chemicals and to the NTP Executive Committee for decision making. The NTP chemical selection process is summarized in the **Federal Register**, April 14, 1981 (46 FR 21828).

On May 19, 1981, the CEC met to evaluate thirteen new chemicals nominated to the NTP for testing. The following table lists the chemicals, their Chemical Abstract Service (CAS) registry numbers, and the types of testing recommended by the CEC at the meeting.

Chemical	CAS No.	Committee recommendation
1. Codeine	76–57–3	Reproductive effects; Carcinogenicity.
2. Gallium arsenide.	1303–00–0	Metabolism.
3. Mercuric oxide yellow.	1344–45–2	No testing recommended.
4. Methiodal sodium.	126–31–8	*Salmonella* microsomal assay.
5. N-Methyl-N-nitroso p-toluenesulfonamide.	80–11–5	Strain A mouse lung adenoma assay.
6. Nickel oxide	1313–99–1	Carcinogenicity (inhalation).
7. Scopolamine	51–34–3	Reproductive effects; Carcinogenicity.
8. Sodium chromate.	7775–11–3	Carcinogenicity (inhalation).
9. Sulfanilamide	63–74–1	*Drosophila* studies.
10. Sulfamethizole.	144–82–1	*Salmonella* microsomal assay; *Drosophila* studies.
11. Sulfathiazole.	72–14–0	*Salmonella* microsomal assay; *Drosophila* studies.
12. Salicylazosulfapyridine.	599–79–1	*Salmonella* microsomal assay; *Drosophila* studies; Carcinogenicity.
13. Theophylline	58–55–9	Reproductive studies (oral); Carcinogenicity (oral).

The Committee recommended that the short term mutagenicity testing of the four sulfa drugs, namely, sulfanilamide, sulfamethizole, sulfathiazole and salicylazosulfapyridine be conducted as a class study. The *Salmonella* microsomal assay was not recommended for sulfanilamide because the chemical had been previously selected by the NTP for such testing.

Interested parties are requested to submit pertinent information. Of particular relevance are the following types of data:

(1) Completed, ongoing and/or planned toxicological testing in the private sector including detailed protocols and, in the case of completed studies, resultant data.

(2) Modes of production, present production levels and potential for occupational exposure.

(3) Uses and resulting exposure levels, where known.

(4) Results from toxicological studies of structurally related compounds.

Kindly submit such information in writing by August 24, 1981. Submissions received after this date, however, will be accepted and utilized where possible.

Dated: July 20, 1981.

David P. Rall, M.D.,

Director, National Toxicology Program.

[FR Doc. 81–21659 Filed 7–23–81; 8:45 am]

BILLING CODE 4110–08–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Geological Survey

[INT FES 81–27]

Mount Tolman Proposed Open Pit Copper—Molybdenum Mine; EIS Availability

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

SUMMARY: Pursuant to section (102(2)(c)) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a Final Environmental Statement for the proposed open-pit copper-molybdenum mine on the Colville Indian Reservation, Ferry County, Washington.

The proposed action is the approval by the Department of the Interior of a lease and mining plan on Colville Tribal lands for the purpose of mining copper and molybdenum. The lease area is entirely located on the Colville Reservation, Ferry County, northeastern Washington. The proposed project contemplates open pit mining of 900 million tons of low grade copper and molybdenum ore from the Mt. Tolman area over a period of 43 years at a production rate of 60,000 tons per day.

In addition, to the mine, the project would consist of (1) a flotation mill plant designed for the production of copper and molybdenum concentrates, (2) waste disposal sites, and (3) support facilities, including a transmission line and a water pipeline.

Copies are available for inspection at the following locations:

Bureau of Indian Affairs, Department of the Interior, Environmental Quality Services, Room 4552, Washington, D.C. 20245, Telephone (202) 343–2256.

Portland Area Office, Bureau of Indian Affairs, Land Services, 1425 N.E. Irving, P.O. Box 3785, Portland, Oregon 98208, Telephone (503) 231–6748.

Colville Agency, Bureau of Indian Affairs, P.O. Box 11, Nespelem, Washington, 99155, Telephone (509) 634–4901.

A limited number of single copies may be obtained from the Portland Area Office, Bureau of Indian Affairs, Land Services, 1425 N.E. Irving, P.O. Box 3785, Portland, Oregon 97208 (Telephone (503) 231–6748.

Dated: July 20, 1981.

Joseph E. Doddridge,

Acting Deputy Assistant Secretary of the Interior.

[FR Doc. 81–21663 Filed 7–23–81; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

Arizona; Safford District Advisory Council; Meeting

Notice is hereby given, in accordance with Public Law 94–579 and 43 CFR part 1780, that a meeting of the Safford District Advisory Council will be held August 27, 1981 at Safford, Arizona at 10:00 a.m. at the Safford District Office, 425 East 4th Street, Safford, Arizona.

Agenda for the meeting will include:

1. Land Selections.
2. Supplemental and Maintenance Feeding of Livestock.
3. Resource Management Plan Guidelines.
4. Water Rights Issues.
5. San Simon Restoration Project.
6. Advisory Council Renomination Procedures.
7. Disposition of Past Council Recommendations.
8. Snowbird Use Facilities.
9. Business from the floor.

The meeting is open to the public. Interested persons may make oral statements to the council between 1:00 p.m. and 2:00 p.m. A written copy of the oral statement must be provided at the conclusion of the presentation. Written statements may also be filed for the council's consideration. Anyone wishing

to make an oral statement must notify the District Manager at the above address by August 25, 1981. Depending upon the number of persons wishing to make an oral statement, a per-person time limit may be considered.

Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction (within regular business hours) within 30 days following the meeting.

Lester K. Rosenkrance,

District Manager.

July 17, 1981.

[FR Doc. 81-21648 Filed 7-23-81; 8:45 am]

BILLING CODE 4310-84-M

[Serial No. 15035]

Idaho; Classification Decision for State Indemnity Lieu Selection

The following described lands, located in Benewah, Bonner, Clearwater, Idaho, Kootenai, Latah, and Shoshone Counties, Idaho, have been examined and found suitable for transfer to the State of Idaho as partial satisfaction of its state land grant. Suspected encumbrances on a portion of these lands may require the elimination of the affected lands from further consideration pending additional analysis and final determination.

These lands are hereby classified for disposal through State Indemnity Lieu Selection (43 CFR 2620). The classification is made pursuant to Section 7 of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315(f)). The grant of lands in this list will be subject to the terms and limitations required by Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–2000d–5:

Boise Meridian, Idaho

I–15035 State List No. 954

T. 54 N., R. 5 W.:
Sec. 2, NE¼SE¼.
T. 55 N., R. 5 W.:
Sec. 20, SE¼SE¼;
Sec. 22, W½SW¼;
Sec. 24, Lot 1, SW¼NW¼, NW¼SW¼, SE¼SW¼, SW¼SE¼;
Sec. 25, Lot 1;
Sec. 26, SE¼NW¼;
Sec. 27, NW¼, N½SW¼, SW¼SE¼;
Sec. 28, N½N½, W½SW¼, SE¼SW¼, S½SE¼;
Sec. 32, NE¼SW¼;
Sec. 34, SE¼SW¼, SW¼SE¼.

Containing 1,185.49 acres.

I–15037 State List No. 956.

T. 45 N., R. 3 E.,
Sec. 34, SE¼SE¼.
T. 47 N., R. 1 E.,
Sec. 5, Lots 1, 2, 3, 4, S½N½, S½;
Sec. 6, Lot 7, SE¼SW¼, S½SE¼.
T. 47 N., R. 1 W.,
Sec. 1, Lots 1, 2, 3, 4, S½NE¼, NE¼SE¼;
Sec. 2, Lot 1, S½N½, NW¼SE¼;
Sec. 3, Lots 1, 5, 6, 7, 8, 11, SE¼NW¼, N½SW¼;
Sec. 4, Lots 1, 2, 4, 6, SE¼NE¼, SW¼NW¼;
Sec. 5, Lots 1, 2, 3, 4, 6, 7, 8, S½NE¼, SE¼NW¼, NE¼SW¼;
Sec. 6, Lot 4, SE¼NW¼;
Sec. 11, W½SW¼, SE¼SW¼, SE¼;
Sec. 12, SE¼NE¼, S½;
Sec. 13, All;
Sec. 14, N½, NE¼SW¼, N½SE¼;
Sec. 15, NE¼.
T. 48 N., R. 1 E.,
Sec. 19, S½NE¼, NE¼NW¼, SE¼SW¼;
Sec. 29, SW¼, S½SE¼;
Sec. 30, Lot 4, W½SE¼, SE¼SE¼.
T. 48 N., R. 1 W.,
Sec. 8, W½NE¼, SE¼NE¼;
Sec. 13, SW¼NE¼, NW¼SE¼;
Sec. 17, Lots 1, 6, 7, SE¼NW¼, SE¼SW¼;
Sec. 18, Lots 3, 4, 5, 8, SW¼NE¼, SE¼SW¼, SW¼SE¼;
Sec. 19, NE¼, E½NW¼, E½SE¼;
Sec. 20, SW¼NE¼, W½, SE¼;
Sec. 21, S½SW¼, E½SE¼, SW¼SE¼;
Sec. 22, W½SW¼;
Sec. 23, SE¼SE¼;
Sec. 24, Lots 3, 4, SE¼NW¼, E½SW¼,SW¼SW¼, W½SE¼;
Sec. 26, NE¼NW¼;
Sec. 27, W½NW¼, SE¼NW¼, SE¼SW¼, SW¼SE¼;
Sec. 28, All;
Sec. 29, NW¼NW¼, S½S½;
Sec. 30, Lot 4, N½NE¼, SW¼NE¼, SE¼SW¼;
Sec. 31, Lots 1, 2, 3, NW¼NE¼, NE¼NW¼;
Sec. 32, Lots 1, 2, 3, 4, N½N½;
Sec. 33, Lots 1, 2, 3, 4, N½N½;
Sec. 34, Lot 5, N½NW¼;
Sec. 35, E½, SW¼.
T. 48 N., R. 2 W.,
Sec. 25, SE¼SW¼, SW¼SE¼.

Containing 9,850.06 acres.

I–15039 State List No. 958

T. 34 N., R. 4 E.,
Sec. 17, SE¼SE¼.
T. 38 N., R. 5 E.,
Sec. 25, MS 3905 (96.25 ac.).
T. 39 N., R. 1 E.,
Sec. 19, Lot 7, SE¼SW¼, S½SE¼;
Sec. 30, Lots 1, 2, E½NW¼.
T. 39 N., R. 3 E.,
Sec. 19, E½NE¼, SW¼NE¼, NE¼SE¼.
T. 45 N., R. 1 E.,
Sec. 20, S½SW¼, SW¼SE¼.
T. 57 N., R. 4 W.,
Sec. 35, Lots 1, 3.
T. 58 N., R. 3 W.,
Sec. 13, NE¼NE¼;
Sec. 15, NE¼NW¼.

Containing 863.59 acres.

I–15040 State List No. 959

T. 44 N., R. 3 E.,
Sec. 1, Lots 1, 2, 3, 4, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 2, Lots 1, 2, 3, 4, SW¼NE¼, S½NW¼, N½SW¼, NW¼SE¼;
Sec. 3, Lot 1, SE¼NE¼;
Sec. 9, SE¼NE¼, NE¼SE¼;
Sec. 10, S½N½;
Sec. 11, NW¼NW¼;
Sec. 12, NE¼NE¼.

Containing 1,149.39 acres.

The area described contains 13,048.53 acres of public lands.

These lands meet the classification criteria in 43 CFR 2430.4(a) as lands valuable for the public purpose of transfer to the state in partial satisfaction of a state land grant. The lands are properly classified for this purpose, consistent with 43 CFR 2430.4(b). Disposal of the subject lands is consistent with the criteria in 43 CFR 2410.1 as follows:

1. The lands are physically suitable or adaptable to the uses or purposes for which they are classified (43 CFR 2410.1(a)).

2. All present and potential uses and users of the lands have been taken into consideration; other things being equal, disposal of these lands should achieve maximum future uses and minimum disturbance to, or dislocation of existing users (43 CFR 2410.1(b)).

3. Disposal of these lands is consistent with state and local government programs, plans, zoning, and regulations applicable to the area in which the lands are located (43 CFR 2410.1(c)).

4. Disposal of these lands is consistent with Federal programs and policies which affect the use or disposal of public lands (43 CFR 2410.1(d)).

The following petitions for classification by the State of Idaho are hereby approved:

I–15035	I–15039
I–15037	I–15040

Type of Petition: State Indemnity Lieu Selections.

Pursuant to Section 402(g) of the Federal Land Policy and Management Act of October 21, 1976, the grazing permittees involved are hereby notified that grazing use of the lands described in this decision will be terminated in the event these lands are transferred out of Federal ownerhip.

Reservations for existing Bureau of Land Management and U.S. Forest Service roads will be made to protect the Government's interest across lands in the applications.

Dated: July 14, 1981.

B. Buffington,

State Director.

[FR Doc. 81-21642 Filed 7-23-81; 8:45 am]

BILLING CODE 4310-84-M

Idaho Falls District; Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that the Idaho Falls

District Grazing Advisory Board will meet September 1, 1981.

The meeting will begin at 9 a.m. in the conference room of the Bureau of Land Management Office, 940 Lincoln Road, Idaho Falls, Idaho 83401. The meeting is open to the public. The Board will take statements from the public between 11:30 a.m. and 12 noon. Anyone wishing to make an oral statement should notify the Idaho Falls BLM District Manager at the above address by August 25, 1981.

The agenda for the meeting will include:

1. Approval of minutes.
2. Idaho Falls BLM District policy on maintenance of range projects.
3. Use of Range Betterment Funds (8100).
4. Arrangement for the next meeting.

Summary minutes of the Board meeting will be kept in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: July 17, 1981.

O'dell A. Frandsen,

District Manager.

[FR Doc. 81-21645 Filed 7-23-81; 8:45 am]

BILLING CODE 4310-84-M

Montana; Meeting

AGENCY: Bureau of Land Management, Lewistown District Advisory Council.

ACTION: Notice of meeting.

SUMMARY: The Lewistown District Advisory Council will meet August 19 and August 20. The agenda will be:

August 19:
- 8:00 a.m.—Depart Ramada Inn; Field Tour of Central Billings Resource Area
- 12:00 p.m.—Return to Ramada Inn
- 1:00 p.m.—Discussion—Define Multiple Use in Context of Billings Resource Management Plan
- 5:00 p.m.—Recess

August 20:
- 8:00 a.m.—Billings Resource Management Plan
- 9:00 a.m.—BLM Minerals Program Briefing
- 1:00 p.m.—Lewistown District Wilderness Study Areas and Review of Public Input
- 3:00 p.m.—Adjournment

Public comment will be sought at the end of each agenda item. Members of the public wishing to join the field tour should contact the District Manager by August 12, 1981.

DATES: August 19, 1981, 8:00 a.m. to 5:00 p.m.; August 20, 1981, 8:00 a.m. to 3:00 p.m.

ADDRESS: Ramada Inn, Mullowney Lane and Interstate 90, Billings, Montana.

FOR FURTHER INFORMATION CONTACT: Glenn W. Freeman, District Manager, Bureau of Land Management, Lewistown, Montana 59457.

SUPPLEMENTAL INFORMATION: The Lewistown District Advisory Council is authorized under Section 309 of the Federal Land Policy and Management Act of 1976 (43 USC 1739). The Council advises the District Manager concerning the planning for and management of the public lands administered within the Lewistown District.

Dated: July 17, 1981.

David E. Little,

Assistant District Manager.

[FR Doc. 81-21647 Filed 7-23-81; 8:45 am]

BILLING CODE 4310-84-M

Montana Wilderness Inventory; Intent To Conduct a Wilderness Inventory of the Sleeping Giant Area in Conjunction With the Headwaters Resource Management Plan

July 15, 1981.

The Montana Bureau of Land Management announces the beginning of an intensive inventory of the Sleeping Giant area which is located near Helena, Montana. Portions of T. 13 N., R. 3 W., T. 13 N., R. 4 W., T. 14 N., R. 3 W. and T. 14 N., R. 4 W., will be inventoried to determine whether or not they possess wilderness characteristics. This area was previously identified as inventory unit number MT-075-111, and was dropped from further study in the Montana initial wilderness inventory final decision of August 1979 because it did not contain 5,000 acres of contiguous, roadless, public land. Through a purchase and exchange process that began in 1971 and which was recently completed, the Bureau of Land Management has acquired intermingled private and State of Montana land and the unit now meets the minimum size criterion. An Interior Department Solicitor's opinion has been requested to clarify whether such acquired lands meet the public lands definition of the Federal Land Policy and Management Act of 1976 and are therefore subject to the wilderness segment of that Act. That opinion is expected soon, but it is necessary to conduct the Sleeping Giant wilderness inventory now in order to include the analysis of the potential wilderness resource in the ongoing Headwaters Resource Management Plan.

The results of the intensive inventory should be available for public review by August 1, 1981. The public will have an opportunity to review the inventory findings during a 30-day public review period from August 10 to September 10, 1981. A public meeting has been scheduled to discuss the inventory findings on August 17, 1981, at the Helena Interagency Fire Center, 2001 Poplar, Helena, Montana, beginning at 7 p.m. MDT.

The Headwaters Resource Management Plan will be the planning mechanism used by the Bureau of Land Management to make wilderness recommendations to Congress for all the wilderness study areas located within the Headwaters Resource Area. This planning effort will also be used to make all other resource allocations.

For further information, contact Jack McIntosh, Butte District Manager, 106 N. Parkmont, P.O. Box 3388, Butte, Montana 59701; telephone: (406) 723-6561.

Michael J. Penfold,

State Director.

[FR Doc. 81-21643 Filed 7-23-81; 8:45 am]

BILLING CODE 4310-84-M

[NM 46089]

New Mexico; Application

July 17, 1981.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Transwestern Pipeline Company has applied for one 10 inch natural gas pipeline right-of-way across the following lands:

New Mexico Principal Meridian, New Mexico

T. 18 S., R. 30 E., N.M.P.M.,
- Section 13: NE¼NE¼, S½NE¼, SE¼NW¼, N½SW¼;
- Section 14: SE¼SW¼,NE¼SE¼, S½SE¼;
- Section 23: N½NW¼, SW¼NW¼.

T. 17 S., R. 30 E., N.M.P.M.,
- Section 35: SE¼SW¼, NE¼SE¼, S½SE¼.

T. 18 S., R. 31 E., N.M.P.M.,
- Section 3: Lot 1, S½NE¼, SE¼NW¼, N½SW¼;
- Section 4: SE¼SW¼, NE¼SE¼,S½SE¼;
- Section 7: SE¼SW¼, NE¼SE¼, S½SE¼;
- Section 8: NE¼NE¼, S½NE¼, SE¼NW¼, N½SW¼;
- Section 9: N½NW¼;
- Section 18: Lot 1, NE¼NW¼.

T. 17 S., R. 32 E., N.M.P.M.,
- Section 21: S½SW¼;
- Section 28: NW¼NW¼;
- Section 29: NE¼, SE¼NW¼N½SW¼;
- Section 30: SE¼SW¼, NE¼SE¼, S½SE¼;
- Section 31: Lot 1, NE¼NW¼.

These pipelines will convey natural gas across 10.145 miles of public land in Eddy and Lea Counties, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideraton of

whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Richard Bastin,
District Manager.

[FR Doc. 81-21644 Filed 7-23-81; 8:45 am]
BILLING CODE 4310-84-M

Wyoming and Montana; Availability of Draft Environmental Impact Statement and Announcement of Public Hearings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management (BLM), Department of the Interior, has prepared a draft environmental impact statement (EIS) on 19 coal tracts located in Montana and Wyoming and has made copies of the document available for public review and comment.

In addition, notice is also given that public hearings will be held and that BLM is seeking public comment on the proposed level of Federal coal leasing as analyzed in the docket.

DATES: Written comments on the proposal contained in the draft EIS will be accepted up to and including September 17, 1981. This amends the notice which appeared on pages 35562-35563 of the **Federal Register**, Volume 46, No. 131, on Thursday, July 9, 1981, which indicated comments were to be received by September 8, 1981.

Public hearings will be held at 1:30 p.m. and 7:30 p.m. on July 29, 1981, at the Natrons Public Library, Crawford Room, 307 E. 2nd Street, Casper, Wyoming; at 1:30 p.m. and 7:30 p.m. on July 30, 1981, at the Ramada Inn, Mullowney Land and I-90, Billings, Montana; and at 7:00 p.m. on August 19, 1981, at the Holiday Inn, 2009 South Douglas Highway, Gillette, Wyoming; and at 7:00 p.m. on August 20, 1981, at the Community Hall, Broadus, Montana.

ADDRESSES: Written comments on the EIS are to be addressed to, and copies of the document may be obtained from, Chuck Wilkie, Division of Planning and Environmental Coordination, Bureau of Land Management, 951 Rancho Road, Casper, Wyoming 82601.

The draft EIS is available for inspection at the following locations:

Wyoming State Office, Bureau of Land Management; 2515 Warren Avenue, Cheyenne, Wyoming 82001.
Casper District Office, Bureau of Land Management; 951 Rancho Road, Casper, Wyoming 82601.
Montana State Office; Bureau of Land Management; 222 N. 32nd Street, Billings, Montana 59107.
Miles City District Office; Bureau of Land Management; West of Miles City, P.O. Box 940, Miles City, Montana 59301.
Office of Public Affairs, Bureau of Land Management; 18th and C Streets, NW., Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: The draft statement analyzes environmental impacts that could result from leasing Federal coal in the Powder River Region. The statement further analyzes the environmental impacts that could result from the implementation of each of four alternatives. The alternatives are the no-action alternative, leasing 14 tracts at the 1.5 billion ton level with the Spring Draw tract included, leasing at the 1.5 billion ton level with the Kintz Creek and Keeline tracts included, and leasing at the maximum level of 2.6 billion tons with the development of all 19 tracts.

Oral testimony will be limited to five minutes duration for each witness at the hearings. Additional time may be granted at the discretion of the presiding officer based on the number of speakers registered. The testimony time limitations will be strictly enforced by the presiding officer. Written texts of prepared speeches may be filed at the hearing whether or not the speaker has been able to complete the oral delivery in the allotted time.

Speakers will be heard in the order established on the witness register. After the last registered witness has been heard, the presiding officer will consider the request of any other person present who wishes to testify. Any person present at the hearing may testify; however, only one witness will be allowed to represent the viewpoints of an organization.

Persons wishing to testify may preregister by submitting a written request to the Casper District Office of the Bureau of Land Management at the above address prior to close of business (4:30 p.m. MST) on July 28, 1981. Requests should identify the organization represented by the individual (if any) and should be signed by the prospective witness. Individuals who do not preregister may register at the hearing location prior to and during each session of the hearing.

In accordance with 43 CFR 3420.6-2 and 3427 of the coal management regulations, the BLM is also requesting that written surface consent agreements, or evidence thereof, given by qualified surface owners for lands within the region be submitted to the appropriate BLM State Office at the addresses given above. Valid written consents for lands in which the ownership of the surface is held by qualified surface owners and the ownership of the underlying coal is reserved to the Federal Government will be accepted until 30 working days prior to the publication of each lease sale notice for the specific lands involved in accordance with the announced schedule of regional lease sales established by Secretarial decision. It is the responsibility of parties intending to file consents to be aware of pending lease sale notice dates, as set forth in an announced regional lease sale schedule.

Section 714(c) of the Surface Mining Control and Reclamination Act (SMCRA) states that, "The Secretary shall not enter into any lease of Federal coal deposits until the surface owner has given written consent to enter and commence surface mining operations and the Secretary has obtained evidence of such consent."

As defined in the regulations (43 CFR 3400.0-5(pp)), qualified surface owner "means the natural person or persons (or corporation, the majority stock of which is held by a person or persons) who:

(1) Hold legal or equitable title to the surface of split estate lands;

(2) Have their principal place of residence on that land, or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface mining operations; or receive directly a significant portion of their income, if any, from such farming and ranching operations, and;

(3) Have met the conditions of paragraphs (1) and (2) of this subsection for a period of at least 3 years, except for persons who gave written consent less than 3 years after they met the requirements of both paragraphs (1) and (2) of this section. In computing the three year period the authorized officer shall include periods during which title was owned by a relative of such person by blood or marriage if, during such periods the relative would have met the requirements of this subsection."

Valid written consent is defined in the regulations (43 CFR 3400.0-5(zz)) as "the document or documents that a qualified surface owner has signed that: (1) Permit a coal operator to enter and commence

surface mining of coal; (2) describe any financial or other consideration given or promised in return for the permission, including in-kind considerations; (3) describe any consideration given in terms of type or method of operation or reclamation for the area; (4) contain any supplemental or related contracts between the surface owner and any other person who is a party to the permission; and (5) contain a full and accurate description of the area covered by the permission."

As required by 43 CFR 3427.2(e), it is the Bureau's responsibility to review all consents received. The Bureau will verify that the named surface owner is a qualified surfaced owner as defined in the regulations and that the title for split estate lands described in the filing is held by the named qualified surface owner(s). In addition, to be considered valid, consents entered into after the August 4, 1977, enactment of the Surface Mining Control and Reclamation Act must be transferable to whomever makes the successful bid in a lease sale for the tract that includes the lands to which the consent applies. A written consent shall be considered transferable only if, at a minimum, it allows that after the lease sale for the tract to which the consent applies (i) payment for the consent may be made by the successful bidder or (ii) the successful bidder may reimburse, at the purchase price of the consent, the party that first obtained the consent. If a filing is from anyone other than the named qualified surface owner, the Bureau shall contact the named qualified surface owner, and request confirmation, in writing, that the filed, transferable, written consent, or evidence thereof, to enter and commence surface mining has been granted and that the filing fully discloses all of the terms of the written consent.

To facilitate the filing and review of written consents from qualified surface owners, the person submitting the consent is asked to include a statement that the evidence submitted represents a true, accurate, and complete statement of information regarding the consent for the area described. Such a validation statement is required by 43 CFR 3427.3. The statement is to be signed and dated by the person submitting the consent and can be either incorporated directly into the consent document or enclosed as a separate item submitted with the consent document. The statement can be worded as follows: "I (We) hereby declare that the evidence submitted, to the best of my (our) knowledge, represents a true, accurate, and complete statement of information regarding the surface owner consent for the area described." This validation statement does not have to be witnessed or notarized.

A qualified surface owner(s) that has not been contacted by, or requested to enter into any agreement with, a private party and who may wish to give consent to allow permission to enter and commence surface coal mining may prepare, sign, and submit a consent document to the BLM Wyoming or Montana State Offices, as appropriate. The consent document should include the information and requirements specified earlier in this notice in order to constitute a valid written consent as defined in the coal regulations (43 CFR 3400.0–5(zz)) and must indicate any specific terms the surface owner may request to allow permission to enter and commence surface coal mining. This unilateral consent document must be signed by a private party at least 30 working days prior to the publication of the lease sale notice for the area affected, or the area affected will not be offered for lease sale.

In accordance with 43 CFR 3427.2(a)(2), written statements from qualified surface owners who refuse to consent to coal leasing may be filed with the Wyoming and Montana State Offices, as appropriate, at the addresses given above. Early submission of a refusal to consent by a qualified surface owner who is firmly against giving consent, thereby disqualifying the specified lands from further leasing consideration, will deter pressure from persons or parties seeking to enter into a consent agreement and will prevent continued inquiries by the BLM of the status of surface owner consent for the specified lands.

Comments on the coal leasing proposal and on the EIS, whether written or oral, will receive equal consideration in preparation of a final EIS.

A Secretarial decision for leasing in the Powder River Region is expected in January 1982, after completion of the final EIS. As part of that decision, the Secretary may choose to hold a series of lease sales beginning in April 1982.

Dated: July 20, 1981.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

Approved

Joseph E. Doddridge, Jr.,

Acting Deputy Assistant Secretary of the Interior.

[FR Doc. 81-21769 Filed 7-23-81; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. The parent corporation is Big Bear Stores Company, a Delaware Corporation with principal offices at 770 West Goodale Boulevard, Columbus, Ohio 43212.

2. Wholly-owned subsidiaries which will participate in the operations (all of which are Delaware Corporations with principal offices at 770 West Goodale Boulevard, Columbus, Ohio 43212) are:

(1) Hart Stores, Inc.

(2) Buckeye Premium Stamps, Inc.

(3) Big Bear Bakeries, Inc.

1. Parent corporation and address of principal office: H.E. Butt Grocery Company, 807 Upper North Broadway, Corpus Christi, TX 78408.

2. Wholly-owned subsidiaries which will participate in the operations, and State of incorporation: Parkway Distributors, Inc., P.O. Box 9216, Corpus Christi, TX 78408. A Texas Corporation.

1. Parent corporation and address of principal office: Ennis Paint Mfg., Inc., P.O. Box 6, Ennis, TX 75119.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

(i) Ennis Steel Industries, P.O. Box 6, Ennis, TX 75119.

(ii) M.F.I., Inc., P.O. Box 6, Ennis, TX 75119.

(iii) Anderson & Jourgensen Truck Line, Inc., P.O. Box 6, Ennis, TX 75119.

(iv) Ennis Chemical Co., Inc., 925 Westchester Avenue, White Plains, NY 10604.

(v) Stripe-A-Zone, Inc., 2714 W. Sherman, Grand Prairie, TX 75051.

1. Parent corporation and address of principal office: The Enterprise Companies Incorporated, 2727 North Loop West, P.O. Box 4324, Houston, Texas 77210.

2. Wholly-owned subsidiaries which will participate in the operations and their respective States of incorporation:

i. Enterprise Products Company—Texas (Including the Holicer Gas Co. and Gas Tec operating divisions).

ii. Enterprise Aviation Company—Texas.

iii. Enterprise Pipeline Company—Texas.

iv. Enterprise Transportation Company—Texas.

v. Wanda Petroleum Company—Texas.

vi. Cango Corporation—Texas.

1. Parent corporation and address of principal office: International Harvester Company, 401 North Michigan Ave., Chicago, IL 60611.

2. The wholly-owned subsidiaries which will participate in the operations are:

(i). Victor Fluid Power, 3412 North River Road, Franklin Park, Illinois 60131. Incorporated under the requirements of the State of Minnesota.

(ii) Iowa Industrial Hydraulics, Industrial Park Road, Pocahontas, Iowa 50574. Incorporated under the requirements of the State of Iowa.

1. Parent corporation and address of principal office: McCain Foods, Ltd., Florenceville, New Brunswick, Canada.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

(i) McCain Foods, Inc., Washburn, ME.

(ii) Thomas Equipment, Ltd., Centerville, New Brunswick, Canada.

(iii) Biopage, Inc., Montreal, Canada.

(iv) M. & D. Transfer, Ltd., St. John, New Brunswick, Canada.

(v) Day & Ross, Ltd., Hartland, New Brunswick, Canada.

1. Principal: Menantico Transport Co., Inc., Sharp Road, P.O. Box 248, Tuckahoe, New Jersey 08250.

2. Wholly-owned affiliate which will participate in the subject transportation: Eastern Transit Mix, Inc., Sharp Road, P.O. Box 248, Tuckahoe, New Jersey 08250.

(1) Parent corporation and address of principal office: Nortek, Inc., 815 Reservoir Avenue, Cranston, Rhode Island 02910.

(2) Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation (as previously filed):

(i) Vitta Corporation, 382 Danbury Road, Wilton, CT 06897, incorporated in Connecticut.

(ii) Fidelity Investment Co., 815 Reservoir Avenue, Cranston, RI 02910, incorporated in Rhode Island.

(iii) Sanford Finishing Corporation, U.S. Hwy No. 1 Bypass, Sanford, NC 27330, incorporated in Rhode Island.

(iv) Stretch Yarns, Inc., 110 Chace Street, Fall River, MA 02724, incorporated in Rhode Island.

(v) Gray Textile Corporation, 110 Chace Street, Fall River, MA 02724, incorporated in Rhode Island.

(vi) Broan Mfg. Co., Inc., 926 West State Street, Hartford, WI 53027, incorporated in Wisconsin.

(vii) Duro Finishing Corporation, 110 Chace Street, Fall River, MA 02724, incorporated in Massachusetts.

(viii) Pioneer Finishing Corporation, 110 Chace Street, Fall River, MA 02724, incorporated in Rhode Island.

(ix) Duro Textile Printers, Inc., 110 Chace Street, Fall River, MA 02724, incorporated in Massachusetts.

(x) Tooltech, Inc., 3145 Columbia Avenue, NE., Minneapolis, MN 55418, incorporated in Minnesota.

(xi) TKN, Inc., 815 Reservoir Avenue, Cranston, RI 02910, incorporated in Rhode Island.

1. Name and address of parent corporation: Nucorp Energy, Inc., an Ohio Corporation, Fifth Avenue Financial Center, 2550 Fifth Avenue, Suite 1100, San Diego, California 92103.

2. Wholly-owned subsidiaries which will participate in the operations and State of incorporation:

(i) Nucorp Energy, Inc., a Texas Corporation.

(ii) Nucorp Supply, Inc., a Texas Corporation.

(iii) Nucorp Compressor, Inc., a Texas Corporation. A wholly owned subsidiary of Nucorp Supply, Inc.

(iv) Nucorp Energy Company, an Ohio Corporation.

(v) Maverick Tube Corp., a Missouri Corporation.

(vi) Crowder Tank, Inc., an Oklahoma Corporation.

(vii) Nucorp Energy of Oklahoma, Inc., an Oklahoma Corporation.

(viii) Cogburn Pump & Supply Co., a Delaware Corporation.

(ix) Bill Dorland Machine & Equipment, Inc., a Texas Corporation.

(x) Taylor Industries, Inc., an Oklahoma Corporation.

1. Parent Corporation and headquarters address: Wetterau Incorporated, 8920 Pershall Rd., Hazelwood, MO 63042.

2. Wholly-owned subsidiaries and divisions:

Wetterau Food Distribution, Hazelwood Division, Hazelwood, Missouri.

Wetterau Food Distribution, Mexico Division, Mexico, Missouri.

Wetterau Food Distribution, Scott City Division, Scott City, Missouri.

Wetterau Food Distribution, Bloomington Division, Bloomington, Indiana.

Wetterau Food Distribution, Greenville Division, Greenville, Kentucky.

Wetterau Food Distribution, Charleston Division, Charleston, South Carolina.

Wetterau Food Distribution, Keene Division, Keene, New Hampshire.

W. T. Sistrunk and Co., Lexington Division, Lexington, Kentucky.

G. H. Delp Co., Reading Division, Temple, Pennsylvania.

G. H. Delp Co., Schuylkill Haven Division, Schuylkill Haven, Pennsylvania.

Wetterau General Merchandising, Charleston Division, Charleston, South Carolina.

Wetterau General Merchandising, Desloge Division, Desloge, Missouri.

Fox Tran Inc., Belle Vernon, Pennsylvania.

Fox Industries, Inc., Pittsburgh, Pennsylvania.

Fox Grocery Co., Belle Vernon Division, Belle Vernon, Pennsylvania.

Fox Grocery Co., Davis Division, Milton, West Virginia.

Fox Grocery Co., Non Foods Division, Butler, Pennsylvania.

Trans Continental Leasing, Ltd., Hazelwood, Missouri.

Wetterau Bakery Products Division, Hazelwood, Missouri.

Wetterau Bakery Products Division, Atlanta, Georgia.

Wetterau Development and Construction Company, Hazelwood, Missouri.

Wetterau Printing Division, Hazelwood, Missouri.

Milliken, Tomlinson Company, Portland Division, Portland, Maine.

Milliken, Tomlinson Company, Presque Isle Division, Presque Isle, Maine.

Wetterau Information Services Center, Florissant, Missouri.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-21689 Filed 7-23-81; 8:45 am]

BILLING CODE 7035-01-M

Long-and-Short-Haul Application for Relief (Formerly Fourth Section Application)

July 21, 1981.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. within 15 days from the date of publication of the notice. FSA 43924, Southwestern Freight Bureau, carload rates on iron or steel pipe and related articles, from Long View, AL, to stations in Southwestern Territory, in Tariff ICC SWFB 4853, to become effective August 9, 1981.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-21668 Filed 7-23-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: July 21, 1981.

In our recent decisions, an 18.5-percent surcharge was authorized on all owner-operators traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figure set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 18.0-percent. Accordingly, we are authorizing that the surcharge for this traffic be reduced 18.0 percent. All owner-operators are to receive compensation at this level.

No change is authorized on the 3.1-percent surcharge on less-than-truckload (LTL) traffic performed by carriers not using owner-operators, or the 2.1-percent surcharge for United Parcel Service. However, the surcharge on bus carrier traffic is reduced to 6.7-percent.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commission or Boards of each State having jurisdiction over transportation by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. for public inspection and by depositing a copy to the Director, Office of the **Federal Register** for publication therein.

It is ordered: This decision shall become effective Friday 12:01 a.m., July 24, 1981.

By the Commission, Chairman Taylor, Commissioners Gresham, Clapp, Trantum, and Gillian. Commissioners Clapp and Trantum were absent and did not participate.

Agatha L. Mergenovich,

Secretary.

July 20, 1981.

Appendix.—*Fuel Surcharge*

Base Date and Price per Gallon (including tax)

Jan. 1, 1979 ..... 63.5

Date of current price measurement and price per gallon (including tax)

July 20, 1981 ..... 131.3

	Transportation performed by—			
	Owner-operator [1]	Other [2]	Bus carrier	UPS
	(1)	(2)	(3)	(4)
Average percent fuel expenses (including taxes) of total revenue	16.9	2.9	6.3	3.3
Percent surcharge developed	18.0	3.1	6.7	[3] 2.9
Percent surcharge allowed	18.0	3.1	6.7	[4] 2.1

[1] Apply to all truckload rated traffic.
[2] Including less-than-truckload.
[3] The percentage surcharge developed for UPS is calculated by applying 61 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).
[4] The developed surcharge is reduced 0.8 percent to reflect fuel-related increases already included in UPS rates.

[FR Doc. 81-21764 Filed 7-23-81; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 430]

Republications of Grants of Operating Rights Authority Prior to Certification; Permanent Authority Decision

The following grants of operating rights authorities are republished by order of the Commission to indicate a broaden grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this **Federal Register** notice. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 154706 (Republication), filed March 3, 1981; published in the **Federal Register** issue of April 1, 1981; and republished this issue. Applicant: OMNI OVERSEAS FREIGHTING, INC., 3001 South Ridgeland Ave., Berwyn, IL 60402. Representative: C. J. Calabria (same address as applicant). A Decision of the Commission, Review Board 3, acting as an appellate division, decided June 11, 1981 and finds that the present and future public convenience and necessity require operations by the applicant as *a common carrier*, by motor vehicle, in interstate or foreign commerce, *over irregular routes*, transporting *electrical appliances*, between points in Du Page County, IL, on the one hand, and, on the other, points in Illinois, Indiana, Michigan, Ohio, Kentucky, Iowa, Minnesota and Wisconsin; that the applicant is fit, willing and able to properly perform the granted service; and conform to statutory and administrative requirements.

Note.—The purpose of this republication is to reflect the territorial description as granted.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-21765 Filed 7-23-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided: July 17, 1981.

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, See 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. 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 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative 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 a public need for the proposed operations and that it 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. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quailty of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified

statements filed on or before 45 days from date of publication, (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 Parker, Chandler and Fortier. (Member Fortier not participating).

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquires to the Ombudsman's Office, (202) 275-7326.

Volume No. OPY-2-134

MC 11722 (Sub-81), filed July 13, 1981. Applicant: BRADER HAULING SERVICE, INC., P.O. Box 655, Zillah, WA 98953. Representative: Flower & Andreotti, 303 East "D" St., Suite 2, Yakima, WA 98901, 509-248-9084. Transporting *such commodities* as are dealt in by grocery and food business houses, between points in ID, OR, and WA.

MC 97633 (Sub-4F), filed July 10, 1981. Applicant: L. A. CHITWOOD, INC., Stark Industrial Park, Charleston, SC 29405. Representative: L. Robert Chitwood (same address as applicant), (803) 744-9942. Transporting *general commodities* (except classes A and B explosives) between points in SC, NC, GA, and TN.

MC 111432 (Sub-17), filed July 13, 1981. Applicant: FRANK J. SIBR & SONS, INC., 5240 West 123rd Place, Alsip, IL 60658. Representative: Douglas G. Brown, 913 South 6th St., Springfield, IL 62703, 217-753-3925. Transporting *petroleum, natural gas and their products* and *chemicals and related products*, between points in the U.S., under continuing contract(s) with Exxon Company, U.S.A., of Houston, TX. Condition: To the extent any certficate issued in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issuance.

MC 112822 (Sub-491), filed July 13, 1981. Applicant: BRAY LINES, INC., 1401 North Little St., Cushing, OK 74023. Representative: David E. Driggers, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264, 303-861-4028. Transporting *petroleum* between points in OK, on the one hand, and, on the other, points in the U.S.

MC 117872 (Sub-12), filed July 10, 1981. Applicant: A. JOSEPH AND COMPANY, 352 E. Woodrow Wilson Ave., P.O. Box 4798, Jackson, MS 39205. Representative: John A. Crawford, 17th Floor Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205, 601-948-5711. Transporting *malt beverages*, between points in Jefferson County, CO, and points in MS.

MC 120843 (Sub-2F), filed July 10, 1981. Applicant: STONE BELT FREIGHT LINES, INC., P.O. Box 281, Bloomington, IN 47401. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, In 46240, (317) 846-6655. Transporting *clay, concrete, glass or stone products*, between points in Monroe and Lawrence Counties, IN, on the one hand, and, on the other, points in the U.S.

MC 145862 (Sub-1), filed June 12, 1981. Applicant: DON LEE SMITH AND GILBERT ERNEST SOMERA, d.b.a. SOMERA-SMITH TRANSPORTATION, 1250 South Wilson Way, Stockton, CA 95205. Representative: Sid Cohen, 1939 Harrison St., Oakland, CA 94612, (415) 893-6682. Transporting *general commodities* (except classes A and B explosives) between (a) the facilities of Kaiser Aluminum and Chemical Corporation, and (b) the facilities of Crown Zellerbach Corporation, at points in AZ, CA, CO, ID, MT, NM, NV, OK, OR, TX, WY, UT and WA, on the one hand, and, on the other, points in the above named States.

MC 149133 (Sub-5), filed July 9, 1981. Applicant: DIST/TRANS MULTI-SERVICES, INC., d.b.a. TAHWHEELALEN EXPRESS, INC., 1333 Nevada Blvd., P.O. Box 7191, Charlotte, NC 28217. Representative: Wyatt E. Smith (same address as applicant), 704-588-2109. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Lever Brothers Company, of New York, NY.

MC 157072, filed June 8, 1981. Applicant: GEMINI TRUCKING CO., 4225 North 2nd St., Philadelphia, PA 19140. Representative: John R. Schott (same address as applicant), 215-329-1300. Transporting *food and related products* and *chemicals and related products*, between those points in the U.S., in and east of MN, IA, MO, OK, and TX.

Volume No. OP1-210

MC 531 (Sub-463,), filed July 7, 1981. Applicant: YOUNGER TRANSPORTATION, INC., 4904 Griggs Rd., PO Box 14066, Houston, TX 77021. Representative: Wray E. Hughes (same address as applicant), (713) 748-0100. Transporting *mercer commodities*, between points in ID, MT, NV, WY, ND, SD, NM, UT, CO, and AZ.

MC 35980 (Sub-8), filed July 6, 1981. Applicant: M-B TRANSPORT, INC., 1941 Land Rd., Jamison, PA 18929. Representative: Francis W. Doyle, 323 Maple Ave., Southhampton, PA 18966 (215) 357-7220 Transporting (1) *clay, concrete, glass or stone products*, between points in Northampton County, PA, on the one hand, and, on the other, points in DE, NJ, and NY, (2) *waste or scrap materials* not identified by industry producing, between Philadelphia, PA, on the one hand, and, on the other, points in CT, DE, FL, GA, IL, IN, MA, MD, ME, MI, NC, NC, NH, NJ, NY, OH, RI, SC, VA, VT, WV, and DC, (3) *chemicals and related products*, between points in Lehigh County, PA, on the one hand, and, on the other, points in DE, MD, NJ, and NY, and (4) *ores and minerals*, between points in NJ, on the one hand, and, on the other, Philadelphia, PA, and points in Lehigh and Northampton Counties, PA.

MC 75840 (Sub-169), filed July 7, 1981. Applicant: MALONE FREIGHT LINES, INC., PO Box 11103, Birmingham, AL 35202. Representative: Guy H. Postell, Suite 713, 3384 Peachtree Rd., N.E., (404) 237-6472. Transporting *chemicals and related products*, between Lake Charles, LA, Joilet and Rockdale, IL, and Wilmington and Ludlow, MA, on the one hand, and, on the other, those points in the U.S. in and east of TX, OK, KS, MO, IA, and MN.

MC 112070 (Sub-28), filed July 2, 1981. Applicant: GRAY MOVING & STORAGE, INC., 1290 South Pearl Street, Denver, CO 80210. Representative Robert J. Gallagher, 1000 Connecticut Avenue, NW., Suite 1200, Washington, DC 20036, (202) 785-0024. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Distressed

Merchandise Assoc., Inc., of Arvada, CO.

MC 138861 (Sub-36), filed July 10, 1981. Applicant: C–LINE, INC., 303 Jefferson Blvd., Warwick, RI 02888. Representative: Ronald N. Cobert, 1730 M Street NW., Suite 501, Washington, DC 20036, (201) 296–2900. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Fulflex, Inc., of Bristol, RI, and Fulflex of North Carolina, Inc., of Scotland Neck, NC.

MC 143061 (Sub-19), filed June 30, 1981. Applicant: ELECTRIC TRANSPORT, INC., P.O. Box 528, Eden, NC 27288. Representative: Archie W. Andrews (same address as applicant), (919) 623–9106. Transporting *air conditioning equipment, furnaces and parts and accessories for the foregoing commodities*, between Memphis, TN, and points in Davidson, Warren and Rutherford Counties, TN, Smith County, TX, Onondaga County, NY, and Los Angeles County, CA, on the one hand, and, on the other, points in the U.S.

MC 143831 (Sub-3), filed July 8, 1981. Applicant: CLIFF VIESSMAN, INC., Clarkfield, MN 56223. Representative: Samuel Rubenstein, PO Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with (1) Associated Milk Producers, Inc., of New Ulm, MN, (2) Hoffman Coop Creamery Ass'n., of Hoffman, MN, (3) LeSueur Cheese Co., of LeSueur, MN, and (4) Union Creamery Assn., of Blooming Prairie, MN.

MC 145601 (Sub-3), filed July 9, 1981. Applicant: MORGAN COUNTY TRUCKING, INC., 1059 S. Grant St., Martinsville, IN 46151. Representative: Walter F. Jones, Jr., 601 Chamber of Commerce Bldg., 320 North Meridian Street, North Meridian Street, Indianapolis, IN 46204, (317) 634–6313. Transporting *furniture and fixtures*, between points in the U.S., under continuing contract(s) with Townhouse Penthouse Industries, of St. Louis, MO.

MC 151790, filed July 7, 1981. Applicant: FLEXIBLE FLYER TRANSIT COMPANY, INC., 2010 South Beltline Blvd., Columbia, SC 29201. Representative: Timothy C. Ross (same address as applicant) (803) 799–7190. Transporting *chemicals and related products*, between points in the U.S., under continuing contract(s) with Cardinal Chemical Company, of Columbia, SC.

MC 156720, filed July 7, 1981. Applicant: McNEILL TRUCKING, CO., INC., P.O. Box 456, Calico Rock, AR 72519. Representative: David E. McNeill (same address as applicant), (501) 297–8344. Transporting *lumber and wood products, and steel banding*, between points in Baxter, Cleburne, Independence, Izard, and Stone Counties, AR, and Boone, Douglas, and Howell Counties, MO, on the one hand, and, on the other, points in AL, AR, CO, IL, IN, IA, KS, KY, LA, MO, MS, MI, NE, NM, OH, TN, TX, and WI.

MC 157050, filed July 9, 1981. Applicant: 145 MARSTON STREET, INC., d.b.a. COADY'S GARAGE & TOWING SERVICE, 145 Marston St., Lawrence, MA 01841. Representative: Russell S. Callahan, P.O. Box 1806, Brockton, MA 02403, (617) 822–1792. Transporting *wrecked or disabled vehicles*, between points in MA and NH, on the one hand, and, on the other, points in CT, MA, ME, NH, NJ, NY, PA, RI, and VT.

[FR Doc. 81–21780 Filed 7–23–81; 8:45 am]
BILLING CODE 7035–01–M

[Volume No. 126]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: July 21, 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, preliminarily, 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 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, Ewing, and Shaffer.

Agatha L. Mergenovich,

Secretary.

MC 58923 (Sub-74)X, filed June 24, 1981. Applicant: GEORGIA HIGHWAY EXPRESS, INC., 2090 Jonesboro Road SE., Atlanta, GA 30315. Representative: William W. West (same address as applicant). Applicant holds authority in Certificates No. MC–119189 and Sub-No. 2, acquired in Docket MC–F–13378. In conjunction with that acquisition, Sub-No. 2 (Certificate of Registration) was converted to a certificate of public convenience and necessity in No. MC–58923 (Sub-No. 48). It seeks to (1) broaden the general commodities authority in both certificates by removing all restrictions "except classes A and B explosives"; and (2) replace the named points with city-wide or county-wide authority: MC–119189, Long Beach, CA (Los Angeles Harbor and Long Beach, CA), and Los Angeles County, CA (Vernon and Los Angeles, CA, and points in the unincorporated portion of Los Angeles County, CA within 3 miles of the intersection of East Ninth St. and Goodrich Blvd.).

MC 94835 (Sub-11)X; filed July 7, 1981. Applicant: J. Rollman & SON, INC., P.O. Box 147, Lititz, PA 17543. Representative: Daniel W. Kane, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Applicant seeks to remove restrictions in its lead and Sub-Nos. 5F, 6F, 8F, 9F, and 10F certificates to (1) broaden the commodity descriptions from (a) brick in the lead and from glass bottles in Sub-No. 6F, to "clay, concrete, glass, or stone products"; (b) from paper, and paper products in Sub-No. 5F, to "pulp, paper, related products"; (c) from fertilizer and manufactured fertilizer in Sub-No. 6F, to "fertilizer, insecticides, fungicides, and herbicides"; (d) from cabbage, flour, and potatoes in Sub-No. 6F, from frozen foods, frozen poultry, tomato plants, fresh vegetables and frozen fruits and frozen bakery products, and vegetables, in Sub-No. 9F, from foods, food products, food ingredients, animal foods, animal food ingredients and meat by-products in Sub-No. 10F, to "food and related products"; (e) from farm machinery in Sub-No. 6F to "machinery"; (f) from general commodities (except those of unusual value, Classes A and B explosives and articles requiring special equipment) in Sub-No. 6F, to "general commodities (except Classes A and B explosives)"; (g) from lumber in Sub-No. 6F, to "lumber and wood products"; (h) from

hay and straw in Sub-No. 6F, to "farm products"; (i) from junk in Sub-No. 8F, to "waste or scrap materials"; (j) from groceries, canned goods, peanuts, noodles, macaroni, spaghetti, vermicelli, and such commodities, except pretzels and pretzel containers, as are dealt in by a retail grocery store, in Sub-No. 8F, to "such commodities as are dealt in by retail, wholesale, chain grocery and food distribution facilities"; (2) replace one-way authority with radial authority in the lead and Sub-Nos. 5F, 6F, 8F, and 9F, between the counties named below and points throughout the U.S.; (3) remove facility limitations in Sub-No. 10F; (4) replace Gonic, NH with Strafford County, NH, West Bridgewater and Fallston, PA, with Beaver County, PA, Auburn, PA, with Schuylkill County, PA, Hazelton, PA, with Luzerne County, PA, Lancaster, PA, with Lancaster County, PA, Paxtonville, PA, with Snyder County, PA, Watsontown, PA, with Northumberland County, PA, York, PA, with York County, PA, Matawan, NJ, with Monmouth County, NJ, Sayreville, NJ, with Middlesex County, NJ, and Hillsborough Township, NJ, with Somerset County, NJ, in the lead; Lititz, PA, with Lancaster County, PA, in Sub-No. 5F; Ronks, PA, with Lancaster County, PA, Paulsboro, NJ, with Gloucester County, NJ, Morgantown, PA, with Berks County, PA, Bowmansville, PA, and points within 15 miles of Bowmansville, PA, with Lancaster, Berks, Chester, and Lebanon Counties, PA, New Market, MD, with St. Marys County, MD, Intercourse, PA, with Lancaster County, PA, Wilmington, DE, with New Castle County, DE, Camden, NJ, with Camden County, NJ, Trenton, NJ, with Mercer County, NJ, in Sub-No. 6F; Harrisburg, PA, and points within 3 miles of Harrisburg, PA, with Dauphin and Cumberland Counties, PA, Perth Amboy, NJ, with Middlesex County, NJ, Salem, NJ, with Salem County, NJ, Phelps and Gorham, NY, with Ontario County, NY, Red Creek, NY, with Wayne County, NY, Swedesboro, NJ, with Gloucester County, NJ, Camden, NJ, with Camden County, NJ, Jersey City, NJ, with Hudson County, NJ, Wyoming, Smyrna and Houston, DE, with Kent County, DE, Philadelphia, PA, with Philadelphia County, PA, Lebanon, PA, with Lebanon County, PA, Wilmington, DE, with New Castle County, DE, in Sub-No. 8F; Lancaster, PA, with Lancaster County, PA, Lebanon, PA, with Lebanon County, PA, Camden, NJ, with Camden County, NJ, Wilmington, DE, with New Castle County, DE, Little Creek, VA, with Suffolk, VA, Lexington, NC, with Davidson County, NC, Charlotte, NC, with Mechlenburg County, NC, Atlanta, GA, with Fulton and DeKalb Counties, GA, Louisville, KY, with Jefferson County, KY, Detroit, MI, with Wayne and Genesee Counties, MI, Cleveland, OH, with Cuyahoga County, OH, Cincinnati, OH, with Hamilton County, OH, Indianapolis, IN, with Marion County, IN, Chicago, IL, with Cook and DuPage Counties, IL, New Haven, CT, with New Haven County, CT, Bridgeport, CT, with Fairfield County, CT, Providence, RI, with Providence County, RI, Boston, MA, with Suffolk County, MA, Worcester, MA, with Worcester County, MA, Portland, ME, with Cumberland County, ME, New Holland, PA, with Lancaster County, PA, Columbus, OH, with Franklin County, OH, Hartford, CT, with Hartford County, CT, New London, CT, with New London County, CT, Torrington, CT, with Litchfield County, CT, Wallingford, CT, with New Haven County, CT, Keene, NH, with Cheshire County, NH, Manchester, NH, with Hillsboro County, NH, Nassau, NH, with Hillsboro County, NH, West Lebanon, NH, with Grafton County, NH, Portsmouth, RI, with New Port County, RI, Toledo, OH, with Lucas County, OH, Bellaire, OH, with Belmont County, OH, Canton, OH, with Stark County, OH, Dayton, OH, with Montgomery County, OH, Green Bay, WI, with Brown County, WI, Madison, WI, with Dane County, WI, Milwaukee, WI, with Milwaukee and Washington Counties, WI, St. Louis, MO, with St. Louis County, MO, Flint, MI, with Genesee County, MI, Lafayette, IN, with Tippecanoe County, IN, Saginaw, MI, with Saginaw County, MI, Williamsburg, VA, with Williamsburg County, VA, Youngstown, OH, with Trumbull and Mahoning Counties, OH, Kearney, NJ, with Hudson County, NJ, Landover, MD, with Price George's County, MD, Downington, PA, with Chester County, PA, in Sub-No. 9F; Scranton, PA, with Lackawanna County, PA, and Allentown, PA, with Lehigh County, PA, in Sub-No. 10F; (5) delete the commodity exception of fire brick in the lead; (6) delete the exception of service to Camden, NJ, in Sub-No. 5; (7) broaden the off-route points of Strasburg, PA, and Curtis Bay, MD, to Lancaster County, PA, and Baltimore County, MD, in Sub-No. 6; (8) remove restrictions limiting service to pick-up and delivery only at named points in Sub-No. 6; (9) eliminate the restriction in Sub-No. 6, limiting transportation to service from July 1 to September 30; (10) remove the exceptions of service to municipalities in Lancaster County, PA, in Sub-No. 6; (11) delete commodity exceptions in Sub-Nos. 8, 9, and 10; (12) eliminate the exceptions against service to Worcester, MA, in Sub-No. 9, Sheet No. 2; (13) remove restrictions against shipments destined to Ohio in Sub-No. 9, Sheet No. 3; and (14) remove originating at and/or destined to restrictions in Sub-No. 10.

MC 107838 (Sub-5)X, filed June 30, 1981. Applicant: H & S MOTOR FREIGHT, INC., 438 East Second Street, Eldon, MO 65026. Representative: Ronald R. Adams, 600 Hubbell Building, Des Moines, IA 50309. Applicant seeks to remove restrictions in its lead and Sub-Nos. 2 and 4 certificates to (1) remove all restrictions in its general commodities authority "except classes A and B explosives" in all certificates; and broaden its other commodity descriptions to: "food and related products" from feed, and "petroleum, natural gas, and their products" from oil in containers, in the lead certificate, sheet 2; (2) authorize service at all intermediate points on described regular routes in all certificates; (3) change one-way regular-route authorities to two-way authority; (4) broaden off-route points in Sub-No. 2 to county-wide authority: Miller, Camden and Morgan Counties, MO (that area of the Lake of the Ozarks bounded by U.S. Hwy 54 and MO Hwy 5, including those areas known as Horseshoe Bend and Shawnee Bend); (5) in the irregular-route authority, in the lead certificate, (a) change one-way authority to radial authority, and (b) replace the named origin point with county-wide authority: Morgan, Benton, Pettis, Miller and Moniteau Counties, MO (Versailles, MO and points within 15 miles thereof); and (6) remove restrictions (a) prohibiting transportation of cetain commodities from, to and between the described points (lead certificate, sheet 1); (b) prohibiting shipments originating at, or interchanged at East St. Louis, IL or St. Louis, MO, when destined to Kansas City, KS, or points beyond and vice versa (lead certificate and Sub-No. 2); (c) prohibiting tacking or joinder with authority presently held to provide a through service between St. Louis and Kansas City, MO, and points in their commercial zones (Sub-No. 4); and (d) prohibiting non-radial transportation of traffic between Springfield and Jefferson City, MO, or radially between those points, and, St. Louis or Kansas City, MO (Sub-No. 4).

Note.—Applicant's authority to tack will be governed by 49 CFR 1042.10(b).

MC 110325 (Sub-177)X, filed June 25, 1981. Applicant: TRANSCON LINES, P.O. Box 92220, Los Angeles, CA 90009. Representative: Jerome Biniasz (same address as applicant). Applicant seeks to remove restrictions in its Sub-Nos. 74,

109F, 129F, 131F, 132F, 133F, 135F, 136F, 137F, 138F, 139F, 140F, 141F, 142F, 143F, 144F, 145F, 147F, 149F, 150F, 151F, 155F, 156F, 157F, 160F, and 161F certificates, to (1) delete all exceptions in its general commodities authority "except classes A and B explosives," in each certificate; (2) broaden regular-route territorial descriptions to authorize service at all intermediate points; (3) remove restrictions prohibiting (a) either picking up or delivery of traffic at certain points (Sub-No. 74, sheet 1); (b) any service between Chattanooga, TN and Memphis, TN (Sub-No. 74, sheet 3); (c) service within the commercial zones of any of the regular-route points authorized except at those points within the State of Tennessee (Sub-No. 74, sheet 7); and remove restrictions which specify service for purposes of joinder only (Sub-No. 149); and (4) remove facilities limitations, and broaden the off-route points to county-wide authority: Sub-No. 74 (sheet 4), Rutherford County, TN (facilities in Rutherford County, near Nashville, TN); Sub-No. 131, Columbia and Union Counties, PA (Millville and New Berlin, PA); Sub-No. 132, Sandusky and Seneca Counties, OH (facilities at Green Springs, OH); Sub-No. 133, Cumberland County, PA (facilities at Mount Holly Springs, PA); Sub-No. 135, Van Buren County, MI (facilities at Decatur, MI); Sub-No. 138, Mayes and Wagoner Counties, OK (Wagoner and Pryor, OK); Sub-No. 139, Pierce County, WA (those points in Pierce County, WA on and west of a specific highway); Sub-No. 143, Valencia County, NM (Grants and Milan, NM); Sub-No. 144, El Paso County, CO (Colorado Springs, CO); Sub-No. 147, Wake County, NC (facilities near Wendell, NC); Sub-No. 150, Milam County, TX (facilities near Cameron, TX); Sub-No. 151, Bradley County, TN (facilities near Charleston, TN); Sub-No. 155, Atchison County, KS (Atchison, KS), Grundy County, IL (Coal City, IL), DuPage, Kane, Winnebago, Peoria and Tazewell Counties, IL (Aurora, Rockford, and Pekin, IL), and Nemaha, Brown and Washington Counties, KS (Sabetha and Linn, KS); Sub-No. 161, Cowlitz County, WA (Longview, WA); and Sub-No. 74, Bledsoe, Sequachie and Van Buren Counties, TN (Fall Creek Falls State Park, TN, and points within ten miles of the boundary of said Park, except Dunlap and Pikeville, TN, and points on and specific highway between Dunlap and Pikeville).

MC 115826 (Sub-602)X, filed May 21, 1981, published in the **Federal Register** of June 17, 1981, and republished as follows: Applicant: W. J. DIGBY INC., 6015 E. 58th Ave., Commerce City, CO 80022. Representative: Jack B. Wolfe, 1600 Sherman St., 665 Capitol Life Center, Denver, CO 80203. Applicant seeks to remove restrictions in its Sub-Nos. 270, 274, 282, 284, 287, 295F, 299F, 316F, 319F, 336F, 338F, 339F, 340F, 343F, 348F, 354F, 359F, 363F, 368F, 469F, 374F, 399F, 405F, 424, 433, 435, 437F, 446F, 448F, 451, 452F, 453F, 463F, 474F, 477F, 483F, 490F, 492F, 506F, 517F, 519F, 529F, 532F, 534F, 535, 538F, 544F, 550F, 558, 559F, 564F, 568F, 574F, 577F, 578F, 581, 589F, 590F, 591F, 593F and 596F certificates to (1) broaden its commodity descriptions to (a) "textile mill products, rubber and plastic products, lumber and wood products and miscellaneous products of manufacturing" from specified commdities such as carpeting, carpets, rugs, floor coverings, article grass carpets, textile, mattress cover, and textile mattress padding, carpet pad, floor tile and floor coverings in Sub-Nos. 270, 274, 299F, 363F, 369F, 433, 508F, 564F, and 568F; (b) "furniture and fixtures, machinery and clay, concrete, glass or stone products", from specified commodities such as new furniture, new furniture parts, lamps, lamp shades, lighting fixtures and light bulbs in Sub-Nos. 282, 295F, and 590F; (c) "clay, concrete, glass or stone products", from insulating materials in Sub-No. 284; (d) "chemical and related products", from specified commodities such as chemicals and adhesive cement, sodium bicarbonate, sodium carbonate and cleaning, scouring and washing compounds in Sub-Nos. 287, 519F, 550F(2), 568(b), and 574F; (e) "machinery" from specified commodities such as mechanical refrigeration units, evaporators and compressors, and materials and accessories and electrical instruments in Sub-Nos. 316F and 354F; (f) "chemicals and related products, metal products and machinery", from chemicals and chemical products, high pressure units and materials, equipment and supplies used in the manufacture, distribution and installation of high pressure water units in Sub-No. 319F; (g) "clay, concrete, glass or stone products and rubber and plastic products", from beads and pulverized glass in Sub-No. 336; (h) "rubber and plastic products, pulp, paper and related products", from specified commodities such as plastic products, commodities dealt in by manufacturers and convertors of paper and paper products, and materials, equipment and supplies, and plastic beads in containers in Sub-Nos. 338F, 339F, 340F and 424; (i) "general commodities (except classes A and B explosives)", from safety clothing and equipment for the protection of workers and materials, equipment and supplies used in the manufacture and distribution of those commodities, abrasives and abrasive products, drilling, coring and mining bits, sealants, power tools and parts for power tools and materials, equipment and supplies used in the manufacture and distribution of industrial ceramics, plastic and synthetic articles, chemical process, mining and petroleum products, and commodities dealt in by manufacturers of such commodities, in Sub-No. 348F; (j) "rubber and plastic products" from rubber tires and tubes and accessories for rubber tires and tubes in Sub-No. 368F; (k) "such commodities as are dealt in by manufacturers of trunks and traveling bags" from materials and supplies used in the manufacture of trucks and traveling bags, and trunks and traveling bags in Sub-No. 374; (l) "pulp, paper and related products, and metal products", from honeycomb cellular boards, honeycomb cellular blocks or honeycomb cellular panels, fiberboard, paper and metal in Sub-No. 405F; (m) "clay, concrete, glass or stone products, metal products and lumber and wood products", from boards, blocks and panels in Sub-No. 435; (n) "chemicals and related products, rubber and plastic products, food and related products and pulp, paper and related products" from drug and toilet preparations, health and beauty care products, cleaning compounds, plastic articles, dietetic foods, infant foods and dessert preparations, chemicals, foodstuffs, cleaning compounds, equipment and appliances used in health and beauty care in Sub-No. 437F; (o) "such commodities as are dealt in by manufacturers of suitcases, travel bags, briefcases and carrying cases", from suitcases, travel bags, briefcases and carrying cases, and materials and supplies used in the manufacture, repair, display and distribution of those commodities in Sub-No. 451; (p) "chemicals and related products and petroleum and natural gas and their products", from cleaning, washing, buffing and polishing compounds, textile softeners, lubricants, hypochlorite solutions, deodorants, disinfectants and paints in Sub-No. 452F; (q) "petroleum, natural gas and their products, chemicals and related products and machinery", from petroleum, petroleum products, vehicle body sealer, and sound deadener compounds and filters and materials, supplies and equipment used in the manufacture, sale and distribution of the commodities named in Sub-No. 453; (r) "machinery, clay, concrete, glass or stone products, metal products,

rubber and plastic products, and instruments and photographic goods," from specified commodities such as electrical household appliances and equipment, hydrotherpy equipment, sink and shower fixtures, smoke alarms, water filters and materials, equipment and supplies used in the manufacture and distribution of the commodities named in Sub-Nos. 474F and 591F; (s) "such commodities as are dealt in by manufacturers of shampoo, toilet preparation, hair mist, soap and cosmetics" from specified commodities such as shampoo, toilet preparation, hair mist, soap, cosmetics and materials, equipment and supplies used in the manufacture of the commodities named in Sub-Nos. 490F and 578F; (t) "chemicals and related products, rubber and plastic products, and machinery", from chemicals, plastic liquid, plastic sheeting, ink, lacquer, varnish, paint thinner and machinery and machinery parts, in Sub-No. 492F; (u) "such commodities as are dealt in by manufacturers of hospital supplies and accessories", from hospital supplies and accessories in Sub-No. 517F; (v) "petroleum, natural gas and their product", from petroleum and petroleum products in Sub-No. 532F; (w) "such commodities as are dealt in by manufacturers of drugs, chemicals and toilet preparations" from drugs, chemcials and toilet preparations in Sub-No. 534F; (x) "petroleum and natural gas and their products and chemicals and related products", from petroleum and petroleum products and vehicle body sealer and sound deadeners in Sub-No. 535; (y) "furniture and fixtures", from wooden cabinets and cabinet parts in Sub-No. 538F; (z) "chemicals and related products and such commodities as are dealt in by manufacturers or distributors of drugs, toilet preparations and health care products", from drugs, toilet preparations, health care products, magnesium hydroxide and alumina calcined in Sub-No. 556; (aa) "rubber and plastic products and such commodities as are dealt in by manufacturers of fiberglass materials and products", from fiberglass, fiberglass products, plastic materials, plastic products, and equipment and supplies used in the manufacture of packing or installation of those commodities in Sub-No. 577F; (bb) "clay, concrete, glass or stone products and non-metallic minerals", from diatomaceous earth in Sub-No. 589F; (cc) "clay, concrete, glass or stone products and machinery" from light bulbs and lighting fixtures and materials, equipment and supplies used in the manufacture, distribution and sale of those commodities in Sub-No. 590F; (dd) "food and related products" from feed and feed ingredients in Sub-No. 550F(1) and (ee) "general commodities (except classes A and B explosives)" from toilet preparations, health and beauty aid products, buffing and polishing compounds, and equipment and appliances used in health and beauty care and commodities used in the manufacture of these commodities in Sub-No. 446F; (2) replace its cities and facilities with county-wide or city-wide authority: in Sub-No. 270, Anaheim CA, with Orange County, CA; in Sub-No. 284, facilities at Fruita, CO, and Grambling, LA, with Mesa County, CO, and Lincoln County, LA; in Sub-No. 316F, Louisville, GA, with Jefferson County, GA; in Sub-No. 336F, facility at Brownwood, TX, with Brown County, TX; in Sub-Nos. 338F and 424, facilities at Shelbyville, IL, with Shelby County, IL; in Sub-No. 340F, facilities at San Pedro, La Mirada, CA, and Saginaw, TX, with Los Angeles and Orange Counties, CA, and Tarrant County, TX; in Sub-No. 343F, facilities at Chicago Heights, IL, with Cook County, IL; in Sub-No. 354F, Loveland, CO, and Ames, IA, with Larimer County, CO, and Story County, IA; in Sub-No. 359F, Cockeysville, MD, and Holyoke, MA with Baltimore County, MD, and Hampden County, MA; in Sub-No. 363F, Madison, IN, and Lancaster and East Hempfield, PA, with Jefferson County, IN, and Lancaster County, PA; in Sub-No. 368F, Huntsville, AL, Buffalo, NY, Dayton, OH, Conschohocken, PA, and Carson, CA, with Madison County, AL, Erie and Niagara Counties, NY, Montgomery County, OH, Montgomery County, PA, and Los Angeles County CA; in Sub-No. 369F, Rabun Gap, Dalton and Chatsworth, GA, McGehee, AR, Chattanooga, TN, Glasgow, VA, Elk Grove Village, IL, Willow Grove, Fogelsville, Lancaster and East Hempfield, PA, with Whitfield, Murray and Rabun Counties, GA, Desha County, AR, Hamilton County, TN, Rockbridge County, VA, Cook and DuPage Counties, IL, and Montgomery, Lancaster and Lehigh Counties, PA; in Sub-No. 374F, Riverside and Waterbury, CT, Mishawaka and Port Clinton, IN, Canton and Lowell, MA, Columbus, MS, Garfield Ridgefield and West Caldwell, NJ, Glencove, NY, Pottstown, PA, Providence and West Warwick, RI, Stuart, VA, and Tucson and Nogales, AZ, with Fairfield and New Haven Counties, CT, St. Joseph County, IN, Norfolk and Middlesex Counties, MA, Lowndes County, MS, Bergen and Essex Counties, NJ, Nassau County, NY, Montgomery County, PA, Providence and Kent Counties, RI, Patrick County, VA, and Pima and Santa Cruz Counties, AZ; in Sub-No. 399F, Worchester, MA, Seattle, WA, Phoenix, AZ, and Charlotte, NC with Worchester County, MA, King County, WA, Maricopa and Pinal Counties, AZ and Mecklenburg County, NC; in Sub-No. 405F, facility at Casa Grande, AZ with Pinal County, AZ, and Pascogoula, MS, with Jackson County, MS; in Sub-No. 435, La Mirada, CA, Casa Grande and Nogales, AZ, with Los Angeles and Orange Counties, CA, and Pinal and San Cruz Counties, AZ; in Sub-No. 437F, La Mirada, CA, Spokane and Seattle, WA, with Los Angeles and Orange Counties, CA and Spokane and King Counties, WA; in Sub-No. 446F, Sparks, NV, Seattle, WA, and Piscataway, NJ; with Washoe County, NV, King County, WA and Middlesex County, NJ; in Sub-No. 448F, facilities at Waxdale and Racine, WI, with Racine County, WI; in Sub-No. 452F, Joilet, IL, Avenel, NJ and Garland, TX with Will County, IL, Middlesex County, NJ, and Dallas County, TX; in Sub-No. 463F, facilities at Denver, CO, with Denver, CO, and Florence, KY with Boone County, KY; in Sub-No. 483F, facility at Cheswick, PA, with Allegheny County, PA; in Sub-No. 492F, Terre Haute, IN, Elmhurst, IL, Herdon, VA, Charlotte and Matthews, NC, Moss Point, MS, Kearney, NJ, Farmingdale, NY, and Woburn and South Hadley Falls, MA, with Vigo County, IN, Cook and Du Page Counties, IL, Fairfax County, VA, Mecklenburg County, NC, Jackson County, MS, Hudson County, NJ, Nassau County, NY, Middlesex and Hampshire Counties, MA; in Sub-No. 508F, facilities in Kankakee, IL, with Kankakee County, IL, Southgate, CA with Los Angeles County, CA; in Sub-No. 517F, Irvine, CA, with Orange County, CA; in Sub-No. 534F, Elkhart, IN, and New Haven, CT, with Elkhart County, IN and New Haven County, CT; in Sub-No. 535, Congo and St. Marys, WV, Emlenton, Farmers Valley and North Warren, PA, and Buffalo and North Tonawanda, NY, with Pleasants and Hancock Counties, WV, Venango, McKeann, and Warren Counties, PA, and Erie and Niagara Counties, NY; in Sub-No. 544F, Hampstead and Easton, MD, Tarboro and Fayetteville, NC, and Lancaster, PA, with Carroll and Talbot Counties, MD, Edgecombe and Cumberland Counties, NC, and Lancaster County, PA; in Sub-No. 550F, facilities in Sweetwater, WY, with Sweetwater County, WY; in Sub-No. 558 Lakewood, NJ, Lewes, DE, Reno, NV, and San Leandro, CA, with Ocean County, NJ, Sussex County, DE, Washoe

County, NV, and Alameda County, CA; in Sub-No. 559F, facilities at Camphill and Mechanicsburg, PA, with Cumberland County, PA; in Sub-No. 564F, East Hempfield Township and Lancaster, PA, with Lancaster County, PA; in Sub-No. 568F, Ames, IA, and Pennsauken, NJ, with Story County, IA, and Camden County, NJ; in Sub-No. 574F, facilities in Old Fort, OH, and Syracuse, NY, with Seneca County, OH and Onondaga County, NY; in Sub-No. 577F, facilities at Amarillo, TX, with Potter County, TX; in Sub-No. 578F, Friendship, NC, with Guilford County, NC; in Sub-No. 581, facilities at Hartford, CT, with Hartford County, CT; in Sub-No. 589F, Maricopa, CA, with Kern County, CA; in Sub-No. 590F, Compton, CA, with Los Angeles County, CA; in Sub-No. 593F, East Greenwood, SC, with Greenwood County, SC; and in Sub-No. 596F, facilities at Chatsworth, CA, with Los Angeles County, CA; (3) change its one-way authority to radial authority between the above named cities and counties, and several States throughout the U.S.; (4) remove various commodity restrictions including except in bulk, in tank vehicles, except of those of unusual value, household goods as defined by the Commission, and those requiring special equipment, in vehicles equipped with mechanical refrigeration, except foodstuffs, in bags, etc. in Sub-Nos. 284, 287, 319F, 340F, 343F, 348F, 359F, 399F, 424, 446F, 448F, 451, 452F, 453F, 463F, 477F, 483F, 519F, 529F, 535, 544F, 550F, 568F, 589F and etc.; (5) eliminate the originating at and/or destined to restrictions in Sub-Nos. 270, 338F, 343F, 359F, 363F, 399F, 424, 433, 435, 446F, 448F, 452F, 453F, 463F, 477F, 544F, 558F, 581F, 589F and 593F; and (6) eliminate the AK and HI exceptions in Sub-Nos. 284, 316F, 348F, 359F, 446F, 448F, 451, 474F, 490F, 532F, 538F, 544F, 564F, 574F, 577F, 591F, 593F, and 596F.

The purposes of this republication are: (A) to delete reference to Sub-No. 446F at (1)(n), and to add "pulp, paper, and related products" to that commodity description; (B) to replace reference to Sub-No. 519F with Sub-No. 591F at (1)(r), and to add "instruments and photographic goods" to that commodity description; and (C) to notice Los Angeles and Orange Counties, CA, for La Mirada, CA, in Sub-Nos. 340F, 435, and 437F, Erie and Niagara Counties, NY, for Buffalo, NY, in Sub-No. 368F, Cook and Du Page Counties, IL, for Elk Grove Village, IL, in Sub-No. 369F, Maricopa and Pinal Counties, AZ, for Phoenix, AZ, in Sub-No. 399F, Cook and Du Page Counties, IL, for Elmhurst, IL, in Sub-No. 492F, and Los Angeles County, CA, for Compton, CA, in Sub-No. 590F.

MC 119422 (Sub-74)X, filed April 27, 1981, previously published in the **Federal Register** of June 1, 1981, republished as corrected: Applicant: EE-JAY MOTOR TRANSPORTS, INC., P.O. Box 1037, East St. Louis, IL 62204. Representative: Lawrence E. Lindeman, 1032 Pennsylvania Building, Pennsylvania Ave. & 13th, N.W., Washington, DC 20004. Applicant seeks to remove restrictions in its lead and Sub-Nos. 29, 30, 31, 36, 39, 41, 42, 43, 44, 45, 46, 47, 50, 55 56, 57, 58, 59, 60, 62, 64F, 65, 67F, 68F, 71F, 72, and 73 certificates to (1) broaden the commodity description: in its lead, Sub-Nos. 67 and 72 from petroleum and petroleum products, in the lead, from fuel oil in the lead, Sub-Nos. 46, and 50 to "petroleum, natural gas, and their products"; from liquid petroleum wax, in the lead to "petroleum, natural gas and their products and food and related products"; from road oil in Sub-Nos. 43, 46, and 50, from lubricating oil in Sub-No. 58, from compounding asphalt in Sub-No. 64 to "petroleum, natural gas and their products"; from asphalt in Sub-Nos. 43, 46, 50, and 64 to "coal and coal products"; from cement in the lead and Sub-Nos. 42, 65, and 68, from cement kiln dust in Sub-No. 39 and from limestone in the lead and Sub-Nos. 31, 45, and 59 to "clay, concrete, glass or stone products"; from fly ash in the lead to "metal products"; from mineral filler in the lead, from lime in Sub-Nos. 45 and 59 to "ores and minerals"; from fertilizer in the lead and Sub-Nos. 30, 41, 44, and 60 from anhydrous ammonia in Sub-No. 44; from plastic pellets in Sub-No. 62 and from acids and chemicals in the lead and Sub-No. 56 to "chemicals and related products"; from plastic pellets in Sub-No. 62 to "rubber and plastic products and food and related products"; from animal and poultry feed in the lead; from corn products in the lead and Sub-Nos. 57 and 71; from corn flour in Sub-No. 36 and from flour in Sub-Nos. 47 and 55 to "food and related products"; from dry commodities in Sub-No. 29 to "commodities in bulk"; (2) remove the "in bulk" restrictions in the lead and Sub-Nos. 29, 30, 31, 43, 44, 45, 46, 47, 50, 55, 56, 57, 58, 59, 60, 62, 64, 67, 71, 72, and 73; (3) remove the in tank vehicles restriction in lead and Sub-Nos. 43, 44, 46, 50, 62, 64, 67, and 72; (4) remove a restriction to a prior or subsequent movement by rail or water in its lead and Sub-No. 62; (5) remove the in bags restrictions in the lead and Sub-No. 36; (6) remove the restriction against the transportation of cryogenic liquids and petroleum products in the lead; (7) remove the "originating at and/or destined to" named points restriction in the lead and Sub-Nos. 29, 44, 45, 46, and 47; (8) remove a restriction requiring heat in transit in Sub-No. 64; (9) remove plantsite limitations (a) in the lead and Sub-Nos. 62 and replace East St. Louis, IL with St. Louis County, MO and St. Louis, MO and Monroe, St. Clair and Madison Counties, IL; in the lead and replace St. Louis, MO with St. Louis, Jefferson, and St. Charles Counties, MO and St. Louis, MO and Monroe, St. Clair and Madison Counties, IL; Hannibal, MO with Marion and Ralls Counties, MO and Pike and Adams Counties, IL; in the lead, Arnold, MO with Jefferson and St. Louis Counties, MO and Monroe County, IL; (b) in the lead and Sub-No. 29 and replace Tri City Regional Port District, Madison County, IL with Madison and St. Clair Counties, IL and St. Louis County, MO, (c) in Sub-Nos. 39 and 68 and replace Selma, MO with Jefferson County, MO, (d) in Sub-No. 41 and replace East St. Louis, IL and points within 5 miles thereof with St. Clair, Monroe and Madison Counties, IL and St. Louis, MO and St. Louis County, MO, (e) in Sub-Nos. 42, 47, 58, 65 and replace St. Louis, MO with St. Louis, St. Charles and Jefferson Counties, MO, St. Louis, MO and St. Clair, Madison and Monroe Counties, IL, (f) in Sub-Nos. 44, 50 and replace Meredosia, IL with Morgan, Brown and Pike Counties, IL, (g) in Sub-No. 45 and replace St. Genevieve and Mosher, Mo with St. Genevieve County, MO and Randolph County, IL, (h) in Sub-No. 56 and replace Pevely, MO with Jefferson County, MO and Monroe County, IL, and Channahon Township, IL with Will County, IL, (i) in Sub-No. 60 and replace Bussen Spur, MO with St. Louis County, MO, (j) in Sub-No. 64 and replace Augusta, KS with Butler County, KS, (k) in Sub-No. 67 and replace Sauget, IL with St. Clair County, IL, and St. Louis County, MO, (l) in Sub-No. 72 and replace Wood River, IL with Madison County, IL and St. Louis County, MO; (10) change city to county-wide authority; (a) in the lead from Centralia, IL and points within 25 miles thereof to Marion, Fayette, Bond, Clinton, Washington, Perry, Jefferson, Hamilton, Wayne, and Clay Counties, IL; from East St. Louis to Monroe, St. Clair and Madison Counties, IL, St. Louis, MO and St. Louis County, MO; from Louisville, KY to Jefferson and Oldham Counties, Ky and Floyd and Clark Counties, IN; from Hannibal, MO to Marion and Ralls Counties, MO and Pike and Adams Counties, IL from Mt. Vernon, IN to Posey County, IN, and Henderson County, KY, (b) in Sub-No. 30 from St. Louis, MO-East St. Louis, IL to St. Louis, St. Charles and Jefferson Counties, MO,

St. Louis, MO, and St. Clair, Monroe and Madison Counties, IL; from Ullin, IL to Pulaski County, IL, (c) in Sub-No. 36 from Mt. Vernon, IN to Posey County, IN and Henderson County, KY, from Millstadt, IL to St. Clair County, IL, (d) in Sub-No. 46 from St. Louis and Chesley Island, MO to St. Louis, Jefferson, and St. Charles Counties, MO, St. Louis, MO, and St. Clair, Monroe and Madison County, IL, (e) in Sub-No. 55 from Springfield, IL to Sangamon County, IL; from St. Louis, MO to St. Louis, St. Charles, and Jefferson Counties, MO, St. Louis MO, and St. Clair, Madison and Monroe Counties, IL; (f) in Sub-No. 57 from Mt. Vernon, IN to Posey County, IN, and Henderson County, KY, (g) in Sub-No. 59 fron St. Genevieve, MO to St. Genevieve County, MO and Randolph County, IL, (h) in Sub-No. 71 from Kanakee, IL and Mt. Vernon, IN to Kanakee County, IL and Posey County, IN, and Henderson, KY, and (i) in Sub-No. 73 from St. Louis, MO to St. Louis, St. Charles and Jefferson Counties, MO, St. Louis, MO, and St. Clair, Madison and Monroe Counties, IL; (11) change one-way to radial authority between various combinations of points throughout the US in all certificates except Sub-No. 73. The purpose of this republication is to broaden certain cities in parts (9)(a), (f), (k), (l), and (10)(a), (c), (f) and (h); to add Sub-No. 29 to part (2) and to change the commodity descriptions in the lead, and Sub-No. 62

MC 124170 (Sub-176)X, filed July 6, 1981. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Representative: William J. Boyd, 2021 Midwest Road, Suite 205, Oak Brook, IL 60521.Applicant seeks to remove restrictions from its Sub-Nos. 58, 61, 67 and 127F certificates as follows: (1) expand commodity description from pork and beef products to "food and related products" in Sub-No. 58; (2) expand commodity description from food, food products, food ingredients, animal foods, animal food ingredients and meat by-products to "food and related products and chemicals and related products" in Sub-No. 61F; (3) expand commodity description from foods and food products, and commodities requiring mechanical refrigeration to "food and related products" in Sub-No. 67; (4) expand commodity description from canned and preserved foodstuffs to "food and related products" in Sub-No. 127F; (5) eliminate "except in bulk" restriction in Sub-Nos. 58, 61 and 67; (6) eliminate the facilities limitations in Sub-Nos. 58, 61, 67 and 127F; (7) replace Scranton and Allentown, PA with Lackawana and Lehigh Counties, PA in Sub-Nos. 61 and 67; (8) eliminate "originating at and destined to" restrictions in Sub-Nos. 58, 61, 67 and 127F and (10) provide radial authority in place of one-way authority between (a) Pittsburgh, PA, and 16 states and DC, and (b) Lackawana and Lehigh Counties, PA, and, 18 states and DC.

MC 127047 (Sub-47)X, filed June 26, 1981. Applicant: ED RACETTE & SON, INC., 6021 North Broadway, Wichita, KS 67219. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. Applicant seeks to remove restrictions in its lead and Sub-Nos. 6, 8, 11, 13, 15, 19, 25, 26, 27, 29, 31, 33F, 35, 38F, 39F, 41F, 42F, and 43F certificates to (A) broaden the commodity descriptions as follows: lead certificate, to "chemicals and related products" from sodium chlorate and monobor-chlorate; Sub-Nos. 8, 11, 13, 15, and 29, to "metal products" from axles, wheels, wheel rims, and hub and drum assemblies; Sub-No. 25, to "farm machinery and accessories" from implement cabs, bale loaders, combine scanners, and accessories for implement cabs; Sub-Nos. 11, 31, and 33, to "lumber and wood products, and building materials" from cabinets, counter tops, wall panels, and folding doors, from plywood, particleboard, hardboard moldings, and plastic articles, and from prefabricated buildings, knocked down and materials and supplies used in their manufacture; Sub-No. 39, to "transportation equipment, and materials and supplies" from axles, tires, wheels, and hub and drum assemblies, and materials and supplies; and delete restrictions which specify service "in packages and containers" in the lead certificate, "except in bulk" in Sub-Nos. 19, 25, and 26, and "in tank vehicles" in Sub-No. 25; (B) replace one-way authority with radial authority; (C) remove exceptions precluding service in AK and HI in Sub-Nos. 25, 41, and 43; AK, HI, and KS in Sub-No. 33; and Fort Smith, AR in Sub-No. 8; (D) remove restrictions limiting transportation of shipments to that originating at the named facilities or destined to the named destinations in Sub-Nos. 25, 26, 27, and 35; (E) broaden the named facilities and municipalities to county-wide authority as follows: lead certificate, Lowndes County, MS (Columbus, MS); Sub-No. 6, Dakota County MN (Lakeville, MN); Sub-No. Harvey County, KS (Newton, KS), York, Burt, Richardson, Hall, Dodge, Colfax and Scotts Bluff Counties, NE (York, Tekamah, Falls City, Grand Island, Fremont, Schuyler, and Scottsbluff, NE), and Pontotoc, Tulsa, Grady, Stephens, Ottawa, Jackson and Comanche Counties, OK (Allen, Broken Arrow, Chickasha, Duncan, Miami, Altus, and Lawton, OK); Sub-No. 11, Harvey and Coffey Counties, KS (Newton and Gridley, KS); Sub-No. 13, Harvey County, KS (Newton, KS), and Turner County, GA (Ashburn, GA); Sub-Nos. 15 and 29, Harvey County, KS (Newton, KS); Sub-No. 25, Harvey and Marion Counties, KS (facilities at Newton and Peabody, KS); Sub-No. 26, Reno and Harvey Counties, KS (Hutchinson and Newton, KS); Sub-Nos. 27, 35, 38, and 41, Sedgwick County, KS (Wichita, KS, and facilities at Wichita, KS); Sub-No. 31, Chesapeake, VA (facilities at Chesapeake, VA), and Dallas County, TX (Carrollton, TX); Sub-No. 39, Cook County, IL (Chicago Ridge, IL), Schuylkill County, PA (Pine Grove, PA), and Turner County, GA (Turner County, GA), La Porte County, IN (Rolling Prairie, IN), Dallas County, TX (Grand Prairie, TX), and Bartow County, GA (Cartersville, GA); Sub-No. 42, Sedgwick, KS (Colwich, KS); and Sub-No. 43, Cowley County, KS (Winfield, KS).

MC 12760 (Sub-8)X, filed July 6, 1981. Applicant: J. P. NOONAN TRANSPORTATION, INC., 436 West Street, West Bridgewater, MA 02379. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Applicant seeks to remove restrictions in its lead and Sub-Nos. 4F, 5F, and 6F certificates to (1) broaden the commodity descriptions in its lead and Sub-Nos. 4F, and 6F, from sand, abrasive or foundry, abrasive and foundry sand, slag, and rock, to "clay, concrete, glass or stone products"; (2) broaden the commodity description in Sub-No. 5F, from petroleum products to "petroleum, natural gas and their products;" (3) expand Coventry, RI to Kent and Providence Counties, RI in the lead; (4) expand Providence, Tiverton, and Portsmouth, RI and Revere and Chelsea, MA to Providence, Kent, Bristol, and Newport Counties, RI, and Norfolk, Bristol, Suffolk, Middlesex, and Essex Counties, MA in Sub-No. 5; (5) expand Bow, NH to Merrimack County, NH in Sub-No. 4; (6) expand West Paris, ME to Oxford County, ME; (7) remove the in tank, in bulk and in dump vehicle restrictions where they appear; (8) authorize radial authorities in lieu of one-way authorities between the counties named above and named New England States in all referenced authorities; and (9) remove the exceptions against service to a named shipper in the lead.

MC 128521 (Sub-15)X, filed June 23, 1981. Applicant: BIRMINHAM-NASHVILLE EXPRESS, INC., P.O. Box

100417, Nashville, TN 37210. Representative: H. E. Miller, Jr., 606 Nashville Bank & Trust Bldg., Nashville, TN 37201. Applicant seeks to remove restrictions in its lead and Sub-Nos. 2, 4, 6, 7 and 10 certificates to (1) broaden the commodity description from general commodities with the usual exceptions to general commodities except classes A and B explosives in all certificates, (2) allow service at all intermediate points in connection with carriers regular routes between (a) Nashville and Birmingham, AL in the lead, (b) Nashville, TN and New Orleans LA in Sub-No. 2, and (c) Huntsville, AL and Nashville, TN in part (7) and Nashville, TN and Florence, AL in part (8) of Sub-No. 7, (3) remove facilities limitation at off-route points and replace with county (a) in the lead and replace Brown's Ferry, AL with Limestone County, AL, (b) in Sub-No. 4, (c) in Sub.-No. 6 and replace Nashville, TN with Rutherford County, TN and (d) in Sub-No. 7 and replace Courtland, AL with Lawrence County, AL (4) remove restriction to servicing named junction near Brentwood and Elkton, TN for purpose of joinder only in the lead, sheet 2, (5) allow service at off-route points to be in connection with all the carriers underlying regular-routes in Sub-No. 4.

MC 129191 (Sub-16)X, filed July 6, 1981. Applicant: RICHARD T. PLATTNER, d.b.a. JANS MOTOR SERVICE, 1260 South Laramie, Alsip, IL 60658. Representative: Stephen H. Loeb, Suite 2027, 33 North LaSalle Street, Chicago, IL 60602. Applicant seeks to remove restrictions in its Sub-Nos. 6, 8, 9F, 13F, and 14F certificates to (1) in Sub-No. 6, part 1, (a) broaden the commodity description from iron and steel articles and contractors machinery, equipment, material and supplies (except commodities in bulk), to "metals, metal products, and machinery, and materials, equipment and supplies used in the manufacture and distribution of metals, metal products, and machinery", (b) eliminate the originating at and destined to plantsite restriction, and (c) change Indian Oaks, IL, to Kankakee County, IL; (2) in Sub-No. 6, part 2, (a) broaden the commodity description from used metal contractors equipment and machinery and materials and supplies (except commodities in bulk), used in the erection of metal structures to "machinery, and materials, equipment and supplies used in the manufacture and distribution of machinery"; (3) in Sub-No. 8, (a) remove the bulk restriction, (b) add "equipment" to the materials and supplies portion of the commodity description, (c) eliminate the named plantsite and change Chicago Heights, IL, to Cook County, IL, and (d) change the one way authority to radial authority; (4) in Sub-No. 9F, (a) change Uhrichsville, OH to Tuscarawas County, OH, and (b) change the one way authority to radial authority; (5) in Sub-No. 13F, (a) broaden the commodity description from iron and steel articles, to "metals and metal products, and materials, equipment and supplies used in the manufacture and distribution of metals and metal products", (b) remove the plantsite restriction, and change Gary, IN to Lake County, IN; South Chicago, Joliet and Waukegan, IL to Cook, Will, and Lake Counties, IL, (c) change the one way authority to radial authority, and (d) remove the originating named facilities restriction and (6) in Sub-No. 14F, (a) broaden the commodity description from iron and steel articles, to "metals and metal products, and materials, equipment, and supplies used in the manufacture and distribution of metals and metal products", (b) remove the plantsite restriction, and (c) change the one way authority to radial authority.

MC 129704 (Sub-6)X, filed July 13, 1981. Applicant: CLARENCE B. BLANKENSHIP, d.b.a. TROY CAB CO., 2136 Burdic, Troy, MI 48098. Representative: Robert E. McFarland, 2855 Coolidge Rd., Ste. 201A, Troy, MI 48084. Applicant seeks to remove restrictions in its lead and Sub-Nos. 2F and 5F certificates to (1) broaden the commodity description from (a) general commodites, with exceptions to "general commodities (except classes A and B explosives)" in the lead and Sub-No. 2F, and (b) auto parts to "transportation equipment" in Sub-No. 5F; (2) eliminate the facilities limitation in Greenville, NC and expand to county-wide authority of Pitt County, NC, in Sub-No. 5F; (3) remove the restriction against the transportation of shipments having an immediately prior or subsequent movement by air in its lead; and (4) remove the per shipment and aggregate per day weight limits from the lead and Sub-Nos. 2F and 5F.

MC 134604 (Sub-10)X, filed July 14, 1981. Applicant: HOWARD DULLUM, Gardner, ND 58038. Representative: Michael E. Miller, 502 First National Bank Bldg., Fargo, ND 58126. Applicant seeks to remove restrictions in its Sub-Nos. 2, 4, 5, 6, 7, and 9 certificates to (1) broaden the commodity descriptions from (a) dry feed and dry feed ingredients (with exceptions) in Sub-No. 2, and from feed ingredients in Sub-No. 7, to "food and related products"; (b) anhydrous ammonia (in bulk, in tank vehicles), in Sub-Nos. 4 and 6, to "commodities in bulk"; (c) vegetable oils, vegetable meals and blends to "food and related products" in Sub-No. 5; (d) fertilizer and fertilizer ingredients (with restrictions) to "chemicals and related products" in Sub-No. 9; (e) dry fertilizer, in bulk, to "commodities in bulk" in Sub-No. 9; (2) expand city designations to county-wide authority: (a) from LaMoure, ND, to LaMoure County, ND in Sub-No. 2; (b) Barnesville, MN, to Clay County, MN, in Sub-No. 4; (c) Riverside, ND, to Cass County, ND, in Sub-No. 5; (d) Benson, MN, to Swift County, MN, in Sub-No. 6; (e) Crookston, Shakopee, Moorhead, Winona, and Pine Bend, MN, to Polk, Scott, Clay, Dakota, and Winona Counties, MN, in Sub-No. 9; (3) authorize radial service in lieu of existing one-way authority between the counties named above, and points throughout the U.S. in Sub-Nos. 2, 4, 5, 6, and 9; (4) remove equipment restrictions in Sub-Nos. 2, 4, 6; (5) eliminate restrictions against service to AK and HI in Sub-Nos. 2 and 5; (6) delete originating at and/or destined to restrictions in Sub-No. 2; (7) remove restrictions against the transportation of various commodities to named mid-western states in Sub-No. 2, Sheet No. 2; and (8) delete plantsite restrictions in Sub-No. 2, Sheet No. 2.

MC 138257 (Sub-5)X, filed July 1, 1981. Applicant: BESTWAY TRANSPORT, INC., 4900 Holabird Avenue, Baltimore, MD 21224. Representative: Robert L. Cope, Suite 501, 1730 M Street, NW, Washington, DC 20036. Applicant seeks to remove restrictions in its lead and Sub-Nos. 2F, 3F, and 4F certificates to (1) remove all restrictions in its geneal commodities authority "except classes A and B explosives" in the lead certificate; and broaden Sub-No. 2 to "such commodities as are dealt in by manufacturers of containers" from bottles; (2) broaden regular-route authority in the lead certificate to authorize service at all intermediate points on the described regular route between Baltimore, MD and Washington, DC; and (3) broaden irregular-route authority in Sub-No. 2 to authorize county-wide authority in lieu of the named municipalities: Harford and Cecil Counties, MD (Havre de Grace, MD), and Mineral County, WV (Keyser, WV).

MC 138861 (Sub-28)X, filed May 12, 1981, previously filed in the Federal Register of June 11, 1981, republished as corrected this issue: Applicant: C-LINE, INC., 303 Jefferson Blvd., Center Warwick, RI 02888. Representative: Ronald N. Cobert, Suite 501, 1730 M Street, NW, Washington, DC 20036. Applicant seeks to remove restrictions

in its No. MC–128343, Sub-Nos. 1, 2, 5, 6, 7, 9, 11, 12, 13, 15, 16, 17, 19, 22, 23, 27, 28, 29, 30, 33, 34, 37 38F, 39F, 41F, 42F, 43F, 44F, 45F, 46F, 47F, 48F, 49F, 50F, 51F, 52F, 53F, 54F, 56F, 57, 58, 59F, 60, 61F, 62, 63, 64, 65, 66F, 67F, 68 and 69F permits, and its No. MC–138861 and Sub-Nos. 3, 4, 8F, 9F, 10F, 11F, 12F, 14F, 15F, 16F, 17F, 18F, 19F and 20F certificates to (1) in its permits (a) broaden the commodity descriptions form electrical goods, appliances, equipment, parts, and related accessory items used in the manufacture and distribution thereof, in Sub-Nos. 1, 6, 7, 12, 13, 15, 30, 33 and 38 to "machinery"; from scrap metal to "waste or scrap material not identified by industry producing" in Sub-No. 1; from plastic materials, plastic products, and supplies used in the production of plastic materials and plastic products in Sub-Nos. 2, 5, 9, 16, 19, 22, 28, 34, 42, and 50, and plastic granules and plastic materials and plastic products in Sub-Nos. 27, 43, and 44; to "rubber and plastic products"; from nails and materials, equipment, and supplies used in the manufacture and distribution of nails in Sub-No. 11, bolts, nuts, washers and fasteners and materials, equipment and supplies used in the manufacture and distribution thereof in Sub-Nos. 29, and 51, aluminum wire and cable in Sub-Nos. 27, 43 and 44, copper rod and cathodes and materials, equipment and supplies used in the manufacture and distribution thereof in Sub-No. 47, iron and steel articles and materials, equipment and supplies used in the manufacture and distribution thereof in Sub-No. 48F, flat wire and steel articles and materials, equipment, and supplies used in the manufacture and distribution thereof in Sub-No. 49, to "metal articles"; from plastic pots, crushed pine cones, ground shale, and plant foods in Sub-Nos, 37 and 45 to "rubber and plastic products, forest products, ores and minerals, clay, concrete, glass or stone products, and chemicals and related products"; from games and toys, school supplies, and hobby supplies to "miscellaneous products of manufacturing, and pulp, paper and related products" in Sub-No. 41F; insulated wire and materials, equipment and supplies used in the manufacture and distribution thereof in Sub-Nos. 17, 23, and 39F to "building materials"; from stapling machines, stitching machines, hand tools, hardware, files, staples, nails, and wire in Sub-No. 46 to "metal products and machinery"; and remove exceptions to general commodities (except classes A and B explosives) in Sub-Nos, 54, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, and 69; (b) remove the "in bulk" and/or "in tank vehicles" restrictions in Sub-Nos. 1, 6, 7, 13, 15, 30, 38F, 2, 5, 9, 16, 28, 42F, 17, 23, 39F, and 41F; (c) remove the "cinder blocks and plastic pipe" restrictions in Sub-Nos. 33 and 34; (d) remove the restriction specifying the Canadian origin and destination to be served in Sub-No. 2; and (e) broaden the territorial description to between points in the U.S. under continuing contract(s) with named shippers in all named permits; (2) in its certificates, broaden the commodity description from cinder blocks to "building materials" in the lead; from plastic pipe to "rubber and plastic products" in Sub-No. 3; from chemicals to "chemicals and related products" in Sub-No. 9F; from steel bolts, and materials, equipment and supplies used in the manufacture and distribution of steel bolts to "metal products" in Sub-No. 12F; from lard, edible tallow, margarine, and vegetable oil to "food and related products" in Sub-No. 14F; from loud speakers, loud speaker stands phonograph operating assemblies, and sound mechanisms assemblies to "machinery" in Sub-No. 16F; from tires and tire tubes to "rubber and plastic products" in Sub-No. 19F; and remove exceptions to general commodities (except classes A and B explosives) in Sub-Nos, 4, 8F, 10F, 11F, 15F, 17F, 18F, and 20F; (3) replace one-way authority with two-way authority in Sub-Nos. (lead), 3, 9F, 12F, 14F, 16F, and 19F; (4) remove the commodities "in bulk" restriction in Sub-Nos. 9F, 12F and 14F; (5) remove the restriction requiring a prior or subsequent movement by rail in Sub-Nos. 17F and 20F; (6) remove the restriction limiting service to the transportation of traffic moving on bills of lading of freight forwarders in Sub-Nos. 4, 11F and 18F; (7) remove the restriction limiting service to the transportation of traffic moving on bills of lading of shippers' associations in Sub-No. 10F; (8) remove the restriction precluding the transportation of shipments to or from the facilities of named shippers in its lead and Sub-No. 3; (9) remove the restriction limiting service to the transportation of shipments originating at or destined to named plantsites in its lead and Sub-No. 14F broaden the territory description by removing facilities or railraod ramp limitations and replacing points with counties: Warwick, RI, with Kent, Providence, Washington, Newport and Bristol Counties, RI, and Bristol County, Ma in its lead; Cranston, RI, with Kent, Bristol, and Providence Counties, RI, and Bristol County, MA, in Sub-Nos. 3, 8F, 9F, 10F, 15F and 19F; Fall River, MA, with Bristol County, MA, and Bristol and Newport Counties, RI in Sub-No. 12F; Bradley, IL with Kankakee County, IL in Sub-No. 14F; from East Providence, RI, with Kent, Bristol, and Providence Counties, RI and Bristol County, MA in Sub-No. 16F; Cincinnati, OH with Butler, Clermont, and Hamilton Counties, OH, and Boone, Campbell and Kenton Counties, KY, in Sub-No. 19F; Wilmington, DE with New Castle County, DE, Salem and Gloucester Counties, NJ, and Delaware and Chester Counties, PA in Sub-No. 4; New York, NY, in Sub-Nos. 4 and 11F; Alexandria, VA, in Sub-Nos. 4, 11F and 20; Baltimore, MD, in Sub-Nos. 4 and 11F; the District of Columbia in Sub-Nos. 4 and 11F; Bridgeport, CT, with Fairfield and New Haven Counties, CT, in Sub-Nos. 17F and 20F; North Haven, CT, with New Haven County, CT, in Sub-Nos. 17F and 20F; Plainfield, CT, with New London and Windham Counties, CT, in Sub-Nos. 17F and 20F Boston, MA, with Bristol, Essex, Middlesex, Norfolk, Plymouth and Suffolk Counties, MA, in Sub-Nos. 17F and 20F; Worcester, MA with Worcester County, MA, in Sub-Nos. 17F and 20F; Pawtucket, RI, with and Providence Counties, RI and Bristol County, MA, in Sub-Nos. 17F and 20F; Providence, RI, with Kent, Bristol, and Providence Counties, RI, and Bristol County, MA, in Sub-Nos. 17F and 20F; and Springfield, MA, with Hampden County, MA, in Sub-No. 20F. The purpose of this republication is to: (a) in part (2) expand various commodities and remove exceptions to general commodities (except classes A and B explosives); (b) in part (1)(a) broaden the commodity description in Sub-No. 15 to "machinery" and substitute Sub-Nos. 17, 23, and 39F for Sub-Nos. 27, 43, and 44 on page 2 line 9; and (c) in part (9) broaden Providence, East Providence, and Cranston, RI, to include Bristol County, RI.

MC 139080 (Sub-7)X, filed June 26, 1981. Applicant: LAMP DELIVERY SERVICE CORPORATION, Route 3, North Brady Street Road, Davenport, IA 52804. Representative: Patrick H. Smyth, Smyth & Guth, P. C., 19 South LaSalle Street, Suite 401, Chicago, IL 60603. Applicant seeks to remove restrictions in its lead and Sub-No. 2 permits, acquired in MC–FC–77800, and Sub-Nos. 4F and 5F permits to: (1) remove the in bulk restrictions in the lead and Sub-No. 4F; (2) in Sub-No. 5F broaden the commodity description from general commodities (except household goods as defined by the Commission and classes A & B explosives) to "general commodities (except classes A & B explosives)"; and (3) in its lead and Sub-

No. 4F broaden its territorial scope to serve between points in the U.S., under continuing contract(s) with the named shippers. Sub-No. 2 will be subsumed in Sub-No. 5F.

MC 140418 (Sub-2)X, filed July 13, 1981. Applicant: E.L.M. ENTERPRISES, INC., 1006 Carroll Street, East Chicago, IN 46312. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. Applicant seeks to remove restrictions in its Sub-No. 1F certificate to broaden the commodity description from lime, limestone, and limestone products, in bulk, to "commodities in bulk".

MC 143912 (Sub-3)X, filed July 6, 1981. Applicant: WESTERN CONTAINER TRANSPORT, INC., 3186 Old Tunnel Road, Lafayette, CA 94549. Representative: Michael S. Rubin, 256 Montgomery Street, San Francisco, CA 94104. Applicant seeks to remove restrictions in its Sub-No. 2F certificate to (1) remove restrictions limiting transportation to shipments in ocean containers and ocean roll-on/ocean roll-off trailers, in its general commodity authority; and (2) delete the restrictions limiting transportation to shipments having a prior or subsequent movement by water.

MC 144969 (Sub-38)X, filed July 6, 1981. Applicant: WHEATON CARTAGE CO., 3rd & "G" Streets, Millville, NJ 08332. Representative: Laurence J. DiStefano, Jr., 1101 Weaton Ave., P.O. Box 269, Millville, NJ 08332. Applicant seeks to remove restrictions in its Sub-Nos. 8F, 21F, and 22F certificates to (1) broaden its commodity descriptions from general commodities (with exceptions), to "general commodities (except classes A and B explosives)", in all of the above sub-numbers; (2) remove the shippers association facilities restrictions in all of the above sub-numbers and authorize radial authority in Sub-Nos. 21F and 22F; (a) in Sub-No. 8F, between Chicago, IL, Philadelphia, PA, and Jersey City, NJ, (b) in Sub-No. 21F, between Philadelphia, PA, and St. Louis, MO, and (c) between Chicago, IL, and St. Louis, MO; and (3) eliminate the originating and destined to restriction in Sub-No. 8F.

MC 147547 (Sub-15)X, filed March 31, 1981, previously published in the **Federal Register** of April 15, 1981, republished as corrected this issue: Applicant: R & D TRUCKING COMPANY, INC., 4401 Mars Hill Road, Lauderdale Industrial Park, Florence, AL 35630. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. Applicant seeks to remove restrictions in its Sub-Nos. 2F, 8F, 9F, 10F, and 11F certificates, and Permit No. MC-143815 and Sub-Nos. 1, 4F, and 8F, to (1) broaden its commodity descriptions (a) in the lead permit and Sub-No. 1, from composition facing and flooring tile, machinery, materials and supplies used in the manufacture of composition facing and flooring tile (except commodities in bulk, in tank vehicles), and plasticizers, resins, and ground rock filler, to "such commodities as are dealt in or used by manufacturers of facing and flooring materials", (b) Sub-No. 4F permit, from heating equipment, fireplaces, stoves, and incinerators, and parts and accessories for the commodities thereof, to "metal products", (c) Sub-No. 8F permit, part (1), from adhesives, sealants, solvents, stains, and preservatives, to "petroleum, natural gas and their products, and chemicals related products"; and part (3), from carpeting, moldings, and wood trim, to "textile mill products and wood and wood products", (d) Sub-No. 2F certificate, from paper and paper products, to "pulp, paper and related products", and (e) Sub-No. 11F certificate, from charcoal and charcoal products, and materials, equipment and supplies used in the manufacture and distribution thereof, of "such commodities as are dealt in or used by manufacturers and distributors of charcoal and charcoal products"; (2) broaden its territorial authority to between points in the U.S. under continuing contract(s) with a named shipper in the lead permit and Sub-Nos. 1, 4F, and 8F; and (3) remove the "originating at and destined to" restrictions in Sub-Nos. 2F, 8F, and 10F certificates, and rephrase the territorial description in those certificates as follows: (a) in Sub-No. 2F, to "between the facilities of Champion International Corporation at points in and east of North Dakota, South Dakota, North Carolina, Kansas, Oklahoma, and Texas, on the one hand, and, on the other, points in and east of North Dakota, South Dakota, North Carolina, Kansas, Oklahoma, and Texas," and (b) in Sub-No. 8F, to "between the facilities used by Brunswick Corporation at points in the United States, on the one hand, and, on the other, points in the United States." The purpose of this republication is to remove in part 3 the facilities restrictions in applicant's Sub-Nos. 2F, 8F, and 10F certificates and to rephrase the territorial description in those certificates as indicated in part 3.

MC 154092 (Sub-3)X, filed July 2, 1981. Applicant: SUGARLAND EXPRESS, INC., 6823 Kansas Avenue, Kansas City, KS 66111. Representative: John E. Jandera, P.O. Box 1979, Topeka, KS 66601. Applicant seeks to remove restrictions from its Sub-No. 1 certificate to: (1) broaden the commodity descriptions from sugar, dry sugar, liquid sugar, syrups and blends thereof, and industrial molasses to "food and related products"; (2) replace facilities limitations and specific point authority with county-wide authority as follows: Nampa with Canyon County, ID; Rupert with Minidoka County, ID, Twin Falls with Twin Falls County, ID, Idaho Falls with Bonneville County, ID, Layton with Davis County, UT, West Jordan with Salt Lake County, UT, Garland with Box Elder County, UT, Rocky Ford and Swink with Otero County, CO, South Torrington with Goshen County, WY, Torrington with Goshen County, WY, Blockfoot with Bingham County, ID, McMillan and Paul with Minidoka County, ID, Mitchell, Scottsbluff, and Gering with Scotts Bluff County, NE, Bayard with Morrill County, NE, Worland with Washakie County, WY, Hardin with Big Horn County, MT, Pueblo with Pueblo County, CO, Denver with Adams, Arapahoe, Douglas, Jefferson and Denver Counties, CO, Hereford with Deaf Smith County, TX, Ft. Morgan with Morgan County, CO, Ovid with Sedgwick County, CO, Sterling with Logan County, CO, Lenexa with Shawnee Mission County, KS, Tulsa with Tulsa County, OK, Grimes with Polk County, IA, Bonner Springs with Wyandotte County, KS, Loring with Leavenworth County, KS, Muncie with Wyandotte County, KS, Lewiston with Cache County, UT; (3) eliminate all equipment restrictions such as in bulk, in tank vehicles wherever they appear in the certificate; (4) eliminate the storage-in-transit restrictions in part 4 of the certificate; (5) eliminate the restriction limiting service at Denver, CO, to the interchanging of shipments only in parts (4) and (8) of the certificate; and (6) replace existing one-way authority with radial authority between points in several western States.

[FR Doc. 81-21797 Filed 7-23-81; 8:45 am]
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Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. 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 1100.252. Applications may be

protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative 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 a public need for the proposed operations and that it 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. This presumption shall not be deemed to exist where the application is opposed. 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 opposition in the form of verified statements filed on or before 45 days from date of publication (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.

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".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OPY–2–133

Decided: July 17, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

MC 147312 (Sub-3), filed July 10, 1981. Applicant: DALOR TRANSIT, INC., 7520 West Ryan Road, Franklin, WI 53132. Representative: Stephen H. Loeb, Suite 2027, 33 N. LaSalle St., Chicago, IL 60602, (312) 726–9722. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 156823, filed June 29, 1981. Applicant: MARGERY D. HUTCHENS, d.b.a. MDH ENTERPRISES, INC., 131 Forest Parkway, Forest Park, GA 30050. Representative: Margery Dean Hutchens (same address as applicant), 404–461–4583. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OPY–4–266

Decided: July 14, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Willians.

MC 148426 (Sub-2), filed July 7, 1981. Applicant: CONTRACT COURIER SERVICES, INC., 951 Piper Lane, Suite 2—Lower Level, Prospect Heights, IL 60070. Representative: Allan C. Zuckerman, 39 South LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 157016, filed July 8, 1981. Applicant: NATIONAL OFFICE MOVING COMPANY, 6903 East Clinton St., Clinton, MD 20735. Representative: David Earl Tinker, 1000 Connecticut Ave., N.W., Suite 1112, Washington, DC 20036, (202) 887–5868. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 157006, filed July 7, 1981. Applicant: CLIFTON & HOLT BROKERAGE COMPANY, P.O. Box 7994, Metairie, LA 70010. Representative: Robert L. Clifton (same address as applicant), (504) 734–0478. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OPY–4–267

Decided: July 16, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 157036, filed July 8, 1981. Applicant: BROWN, INC. d.b.a. ALL STATES GENERAL COMMODITIES TRANSPORTATION, 170 Barbour Rd., New Britain, CT 06057. Representative: Michael P. D'Addabbo (same address as applicant), (203) 229–5415. As a *broker of general commodities* (except household goods), between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81–21670 Filed 7–23–81; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. 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 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative 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 a public need for the proposed operations and that it 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. This presumpfion shall not be deemed to exist where the application is opposed. 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 opposition in the form of verified statements filed on or before 45 days from date of publication, (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. 2, Members Carleton, Fisher, and Williams.

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".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OPY-4-262

Decided: July 14, 1981.

MC 144927 (Sub-36), filed May 27, 1981, previously noticed in the **Federal Register** of June 22, 1981. Applicant: REMINGTON FREIGHT LINES, INC., Box 315, U.S. 24 West, Remington, IN 47977. Representative: Jack Luck (same address as applicant), (219) 261-3461. Transporting *doors, door frames, and elevator cabs,* between Brooklyn, NY, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, OK, and TX.

Note.—The purpose of this republication is to delete the plant site restriction.

MC 145557 (Sub-16), filed July 6, 1981. Applicant: LIBERTY TRANSPORT, INC., P.O. Box 9182, Kansas City, MO 64148. Representative: Arthur J. Cerra, 2100 CharterBank Center, P.O. Box 19251, Kansas City, MO 64141. Transporting *meat, meat products and meat by-products and articles distributed by meat packinghouses,* between points in Crawford, Dubuque, and Plymouth Counties, IA, those in Douglas County, NE and those in San Mateo County, CA, on the one hand, and, on the other, points in the U.S. east of MT, WY, CO, and NM.

MC 150927 (Sub-2), filed May 27, 1981, previously noticed in the **Federal Register** of June 22, 1981. Applicant: HORIZON TRANSPORT, INC., P.O. Box 20648, Portland, OR 97220. Representative: Michael D. Crew, 1618 SW First Ave., Suite 205, Portland, OR 97201, (503) 221-1529. Transporting (1) *iron, steel, and related products,* (2) *building materials,* and (3) *diatomaceious earth,* between points in OR, WA, CA, ID, MT, WY, CO, UT, AZ, NM, NV, ND, SD, and NE.

Note.—The purpose of this republication is to include the state of ND, which was inadvertently omitted from the previous notice.

MC 151347 (Sub-2), filed June 29, 1981. Applicant: EAST POINT EXPRESS, INC., 3716 N. Racine, Chicago, IL 60613. Representative: Steven Gross, 221 N. LaSalle St., Chicago, IL 60601, (312) 346-2785. Transporting *food and related products;* between the facilities of Star-Kist Foods, Inc., and Heinz USA, Division of H. J. Heinz Co., at points in the U.S., on the one hand, and, on the other, points in the U.S.

Volume No. OPY-4-263

Decided: July 14, 1981.

MC 130616 (Sub-1), filed June 30, 1981. Applicant: CARAVAN COACH LINES, INC., R.D. 3, Box 451, Wharton, NJ 07885. Representative: L. C. Major, Jr., Suite 400 Overlook Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312, (703) 750-1112. As a broker, at New York, and points in Morris and Ocean Counties, NJ, Dade and West Palm Beach Counties, FL, San Francisco and Los Angeles Counties, CA, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* in special or charter operations, between points in the U.S.

MC 147316 (Sub-4, filed June 26, 1981. Applicant CRESTON TRANSPORTATION, INCORPORATED, East Hwy. 34, Creston, IA 50801. Representative: David L. Charles, 2600 Ruan Center, Des Moines, IA 50309, (515) 243-6251. Transporting *beer and malt beverages, empty cans, bottles and components parts, fertilizer, steel, machinery, packing plant products,* and *food* and *related products,* between points in IA, on the one hand, and, on the other, points in WI, IN, and MI.

Volume No. OPY-4-264

Decided: July 14, 1981.

MC 121406 (Sub-2), filed July 7, 1981. Applicant: STAR LINE EXPRESS, INC., 700 W. Estes Ave., Schaumburg, IL 60193. Representative: Donald S. Mullins, 1033 Graceland Ave., Des Plaines, IL 60016, (312) 298-1094. Transporting *general commodities* (except classes A and B explosives), between points in IL and that portion of IN within the Chicago, IL, Commercial Zone, on the one hand, and, on the other, points in IA, IL, IN, KY, MI, MN, MO, and WI.

MC 140496 (Sub-4), filed July 7, 1981. Applicant: ABLE MOVING & STORAGE CO., INC., 15507 Airline Hwy., Baton Rouge, LA 70821. Representative: Clayton J. Constant, P.O. Box 1931, Baton Rouge, LA 70821, (504) 291-0850. Transporting *household goods,* between points in AL, AZ, AR, CA, CO, DE, FL, GA, IL, IN, KS, KY, LA, MD, MS, MO, NV, NJ, NM, NY, NC, OH, OK, PA, SC, TN, TX, UT, VA, and WV.

MC 143956 (Sub-29), filed July 9, 1981. Applicant: GARDNER TRUCKING CO., INC., P.O. DRAWER 493, Walterboro, SC 29488. Representative: Steven W. Gardner, 3400 Peachtree Rd., NE., Suite 1631, Atlanta, GA 30326, (404) 233-0001. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with NCR Corporation, of Dayton, OH.

MC 146976 (Sub-7), filed July 8, 1981. Applicant: FOREWAY TRANSPORTATION, INC., 1413 Randall St., Coopersville, MI 49404. Representative: D. Richard Black, Jr., 7610 Cottonwood Dr., Jenison, MI 49428, (616) 457-9290. Transporting *printing paper and pulpboard,* between the facilities of S.D. Warren Paper Co., a division of Scott Paper Co. at Muskegon, MI, on the one hand, and, on the other, points in WV, VA, DE, CT, RI, MA, VT, NH, and ME.

Volume No. OPY-4-265

Decided: July 14, 1981.

MC 118776 (Sub-75), filed July 8, 1981. Applicant: GULLY TRANSPORTATION, INC., 3820 Wisman Lane, Quincy, IL 62301. Representative: L. F. Blackstun (same address as applicant), (217) 224-2685. Transporting *general commodities* (except classes A and B explosives), (a) between points in IL, IA, and MO, and (b) between points in IL, IA, and MO, on the one hand, and, on the other, points in AR, IN, KY, KS, MI, MN, NE, OH, OK, TN, TX, and WI.

Note.—Applicant bases its application not on shipper support but on past operations within the involved territory.

MC 125996 (Sub-100), filed July 7, 1981. Applicant: GOLDEN TRANSPORTATION, INC., P.O. Box 26908, Salt Lake City, UT 84125. Representative: Stanely C. Olsen, Jr., 5200 Willson Rd., Suite 307, Minneapolis, MN 55424, (612) 927–8855. Transporting *food and related products,* between points in Fresno County, CA, on the one hand, and, on the other, points in NE.

MC 135306 (Sub-10), filed July 7, 1981. Applicant: DAN'S TRANSIT, INC., 1254 Medina Rd., Medina, OH 44256. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215, (614) 228–1541. Transporting *general commodities* (except classes A and B explosives), between points in Cuyahoga County, OH, on the one hand, and, on the other, points in the U.S.

MC 140686 (Sub-4), filed July 8, 1981. Applicant: VSM TRUCKING, INC., Abingdon, IL 61410. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *machinery,* between points in Knox County, IL, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, KS, OK, and TX.

MC 146636 (Sub-9), filed July 7, 1981. Applicant: J. K. SMITH, P. SMITH and M. R. SMITH, d.b.a. SMITH TRUCKING, Rt. 1, Box 43, Round Lake, MN 56167. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. Transporting *clay, concrete, glass or stone products,* between points in MN, on the one hand, and, on the other, points in the U.S.

[FR Doc. 81–21671 Filed 7–23–81; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Justice Proposal To Settle Case, United States v. Time Finance Adjusters

United States v. Time Finance Adjusters

Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16 (b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement (CIS) (as set forth below) have been filed with the United States District Court for the Middle District of Florida in *United States* v. *Time Finance Adjusters,* Civil Action No. 81–003–Orl–CIV–Y. The Complaint in this case alleged that Time Finance Adjusters ("TFA"), a national association of repossessors, and its co-conspirators engaged in a combination and conspiracy to fix prices, restrict territories and limit membership in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Consent Judgment enjoins the defendant from fixing, advertising and publishing any prices for repossession services; participating in any communications with representatives of other repossessor associations that relate to prices for repossession services; engaging in any conduct the effect of which is to influence the formulation of prices for repossession services; and expelling any TFA member or denying or delaying any TFA applicant membership on the basis of population or other demographic information, or on the basis of the number of TFA members who operate or may operate in that service area. Further, the proposed Judgment enjoins the defendant from any activity the purpose or foreseeable effect of which is to allocate, restrict or otherwise influence the service area or territory in which any of its members operate or advertise that they operate, and from establishing or maintaining unreasonable fees for TFA membership. The defendant is required to publish certain information in its publications; to eliminate any restrictions on TFA members concerning the manner or extent of advertising their service area; to eliminate certain membership requirements; and to admit to membership any applicant who meets certain requirements. The defendant is required also to establish an antitrust compliance program which must include annual reporting to the Department of Justice and dissemination of this Judgment to each of its officers, directors, employees and members.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John W. Poole, Jr., Chief, Special Litigation Section, Room 7216, Antitrust Division, Department of Justice, Washington, D.C. 20530, (Telephone: (202) 633–2426).

Joseph H. Widmar,

Director of Operations, Antitrust Division, Department of Justice.

U.S. District Court, Middle District of Florida, Orlando Division

United States of America, Plaintiff, v. *Time Finance Adjusters,* Defendant.

Civil No. 81–003–Orl–CIV–Y.

Filed: July 14, 1981.

Stipulation

It is stipulated by the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the plaintiff has not withdrawn its consent, which it may do any time before the entry of the proposed Final Judgment by serving notice on defendant and by filing that notice with the Court.

2. If the plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, the Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: July 14, 1981.

For the plaintiff: William F. Baxter, *Assistant Attorney General;* Mark Leddy, John W. Poole, Jr., Judy Whalley, Catherine G. O'Sullivan, *Attorneys, U.S. Department of Justice.*

Terrence F. McDonald,
Charles Jerome Ware,
Steven B. Kramer,
Attorneys, Antitrust Division, U.S. Department of Justice, 10th and Pennsylvania Ave., N.W., Washington, D.C. 20530, Telephone: (202) 633–3082.

For the Defendant: Donald Gifford, Shackleford, Farrior, Stallings and Evans, P.O. Box 3324, Tampa, Florida 33601, Telephone: (813) 273–5000.

U.S. District Court, Middle District of Florida, Orlando Division

United States of America, Plaintiff, v. *Time Finance Adjusters,* Defendant.

Civil No. 81–003–Orl–CIV–Y.

Filed: July 14, 1981.

Proposed Final Judgment

The plaintiff, United States of America, having filed its complaint on January 6, 1981, and the plaintiff and the defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party with respect to any issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law and upon consent of the parties, it is

Ordered, adjudged and decreed, as follows:

I

This Court has jurisdiction over the subject matter of this action and over each of the parties. The complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

As used in this Final Judgment:

(A) "Repossessor" or "adjuster" means any individual, partnership, corporation, association, firm, or any other business or legal entity which provides repossession services for banks, credit unions or other lenders that seek to recover merchandise sold under security agreements where the debtor has forfeited possessory rights by defaulting on loan terms.

(B) "Repossession services" includes, but is not limited to, tracing of property, collection and adjustment of loans, as well as repossession, sale or return of collateral.

(C) "Member" means any repossessor who is listed in any Time Finance Adjuster ("TFA") publication.

III

This Final Judgment applies to the defendant and to its officers, directors, members, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with the defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

The defendant, whether acting unilaterally or in concert with any other person, is enjoined from, directly or indirectly:

(A) Fixing, establishing, or maintaining any price schedule or list for repossession services;

(B) Advocating, urging, recommending or suggesting any price schedule or list for repossession services;

(C) Publishing or distributing any price schedule or list for repossession services;

(D) Participating in any conversations, discussions or other communications with representatives of other repossessor associations that in any way relate to any price, price schedule or list for repossession services; or

(E) Engaging in any other conduct the purpose or foreseeable effect of which is to influence the formulation of any price schedule or list for repossession services.

V

The defendant is ordered to publish in a prominent manner in the prefatory section of each TFA membership directory or other similar publication, the following statement:

In conformity with a consent decree entered into with the United States Department of Justice, Time Finance Adjuster has discontinued publishing and disseminating fee schedules. All schedules contained in prior editions are, in their entirety, null and void. Time Finance Adjusters makes no suggestion whatsoever concerning fees or prices for repossession services and does not restrict or limit the right of any of its members to determine, in accordance with his or her individual business judgment, the fees to charge for repossession services.

VI

The defendant is prohibited from publishing any other reference to fees or prices for repossession services in its directory or other publications; *provided however*, that nothing in this Judgment shall:

(A) Limit the ability of TFA to urge prospective purchasers of repossession services to negotiate in advance with members as to prices or fees; or

(B) Limit the ability of TFA to allow individual TFA members to advertise in the TFA directory, or other TFA listings, his or her individual prices or fees for repossession services.

VII

The defendant is enjoined from expelling any member or from denying or delaying any application for TFA membership, in whole or in part, on the basis of:

(A) The population or other demographic information of a TFA member's or an applicant's service area; or

(B) The number of other TFA members or applicants who operate or may operate in that service area.

VIII

The defendant is ordered and directed to eliminate any restrictions on TFA members concerning the manner or extent of advertising their service area in any advertisement, directory or other publication.

IX

The defendant, whether acting unilaterally or in concert with any other person, is enjoined from any activity the purpose or foreseeable effect of which is to allocate, protect, limit, or otherwise influence the service area or territory in which any of its members operate or advertise that they operate.

X

The defendant is ordered and directed to eliminate the following TFA membership requirements:

(A) Any time period of experience in the repossession business that is greater than one year;

(B) Full-time repossession business;

(C) United States citizenship; or

(D) Any requirements based on any evaluation or determination of an applicant's financial condition, personal character or morals, or local referral business.

XI

The defendant is ordered and directed to admit any applicant for TFA membership who meets the following requirements:

(A) Ability to obtain and retain in the commerical market, reasonable fidelity bonds;

(B) Applicant is licensed under all applicable state and local licensing laws;

(C) Certification that he or she has not been convicted of a felony within a period of up to ten years prior to his or her membership application;

(D) One year of experience as an active repossessor; and

(E) Maintans a principal office location specifically for his or her repossession beusiness during TFA memberhsip.

XII

The defendant is enjoined from establishing or maintaining unreasonable fees for TFA membership.

XIII

The defendant is ordered to publish in the prefatory section of each TFA membership directory, or other similar publication, the address to which applications for TFA memberships should be forwarded. Within fifteen (15) days of receiving any application for membership, the defendant shall furnish to each applicant a written response stating when the application will be reviewed, whether the application is complete, and if the application is not complete, a written itemization of any document or information necessary to complete the application. TFA shall convene at least two meetings per year at which membership applications shall be reviewed. All applications completed before any TFA meeting shall be reviewed at that meeting. Within ten (10) days after reviewing any membership application, the defendant shall furnish a written notice to each applicant indicating whether the applicant was accepted for TFA membership, and, if the applicant was not accepted, a written statement of reasons why the applicant was not accepted for membership.

XIV

The defendant is ordered and directed:

(A) To furnish within sixty (60) days after entry of this Final Judgment a copy thereof to each of its officers, directors, employees and members engaged in the repossession business;

(B) To furnish a copy of this Final Judgment to each person who in the ten (10) years after entry of this Final Judgment, becomes an officer, director, employee or member engaged in the repossession business within thirty (30) days after such person is employed by or becomes associated with the defendant;

(C) To direct each person to whom a copy of this Final Judgment is furnished pursuant to subparagraphs XIV(A) and XIV(B) hereof to retain such copy as long as he or she is employed by or associated with the defendant;

(D) To require each person to whom a copy of this Final Judgment is furnished pursuant to subparagraphs XIV(A) and XIV(B) hereof to sign and submit to the defendant a certificate in substantially the following form; and the defendant shall retain such certificates as long as this Final Judgment is in effect and for one year thereafter:

I (1) acknowledge receipt of a copy of the 1981 antitrust Final Judgment, (2) represent that I have read and understand the Final Judgment, and (3) acknowledge that I have been advised and understand that non-compliance with the Final Judgment may result in conviction for contempt of court and imprisonment and/of fines;

(E) At least once each year, during the ten (10) years after entry of this Judgment, to call to the attention of each of its officers, directors, employees and members engaged in the repossession or finance adjustment business the limitations imposed upon them by this Final Judgment, and of the sanctions that may be imposed for non-compliance therewith;

(F) To file with the court and serve upon the plaintiff, within ninety (90) days from the date of entry of this Final Judgment, an

affidavit as to the fact and manner of its compliance with subsection XIV(A); and

(G) To furnish the plaintiff within thirty (30) days after each anniversary date of the entry of this Final Judgment, for a period of ten (10) years, an affidavit as to the fact of and manner of securing and ascertaining compliance with, the provisions of Sections IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, and subsections XIV(B), XIV(C), XIV(D) and XIV(E) of this Final Judgment.

XV

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, duly authorized representatives of the Department of Justice shall be permitted:

(1) Access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this decree; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, employees, agents, or members of the defendant, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if required, with respect to any of the matters contained in this Final Judgment as may be requested. No information or documents obtained by the means provided in this Section XV shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by the plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

XVI

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for construction or implementation of this Final Judgment, for modification of any of the provisions, for enforcement or compliance, and for punishment of violations.

XVII

This Final Judgment shall remain in effect until ten (10) years from date of entry.

XVIII

Entry of this Final Judgment is in the public interest.

Dated: July 14, 1981.

_____,

United States District Judge.

U.S. District Court, Middle District of Florida, Orlando Division

United States of America, Plaintiff, v. *Time Finance Adjusters*, Defendant.

Civil No. 81-003-Or1-CIV-Y.

Filed: July 14, 1981.

Competitive Impact Statement

This competitive impact statement, relating to the proposed consent judgment ("Judgment") submitted for entry in this civil antitrust proceeding, is filed by the United States pursuant to Section (b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 ("Act").

I

Nature and Purpose of the Proceeding

On January 6, 1981, the United States filed a civil antitrust Complaint alleging that Time Finance Adjusters, ("TFA"), a national association of repossessors located in Daytona Beach, Florida, and its co-conspirators had conspired to fix prices, restrict territories and limit membership in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

The Complaint alleges that, beginning at least as early as 1975, and continuing to the date of the filing of the Complaint in the action, defendant and various co-conspirators engaged in a nationwide combination and conspiracy to agree on, prepare, publish in defendant's directory, disseminate and encourage members to adhere to, fee schedules for repossession services; to restrict membership to one or few members in certain geographic areas; to restrict the area in which each of defendant's members could advertise its repossession services; and to establish arbitrary and unreasonable membership restrictions.

The Complaint asks the Court to enjoin and restrain the defendant from such activities in the future.

Entry by the Court of this Judgment will terminate this litigation. The Court will retain jurisdiction for possible future proceedings that might be required to interpret, modify or enforce its provisions.

II

Nature of the Alleged Violation

Repossessors, or adjusters as they are sometimes called, provide services for banks, credit unions and other lenders that seek to recover merchandise sold under a security agreement. During the period covered by the Complaint, defendant had member-repossessors located throughout the United States.

The Complaint alleges that defendant and co-conspirators agreed to eliminate price and other forms of competition in the trade and commerce of providing repossession services. The Complaint alleges further that they: (a) agreed to, prepared, published in the TFA directory, disseminated and encouraged members to adhere to fee schedules for repossession services; (b) restricted membership in TFA to one or few members in certain geographic areas; (c) restricted the area for which each TFA member could advertise its services; and (d) established arbitrary and unreasonable membership restrictions.

III

Explanation of the Proposed Final Judgment

The United States and defendant have stipulated that this Judgment may be entered by the Court at any time after compliance with the Act. The Judgment states that it constitutes no admission by any party of any issue of fact or law.

Under the provisions of the Act, entry of the Judgment is conditioned upon a determination by the Court that it is in the public interest.

The Judgment contains two principal forms of relief. First, defendant is enjoined from engaging in the behavior that constituted the conspiracy alleged in the Complaint. Second, the Judgment places affirmative burdens on defendant directed toward preventing recurrence of such behavior.

A. *Prohibited Conduct.* Under Section IV defendant is restrained from (1) fixing any price schedule or list for repossession services; (2) advertising any price schedule or list for repossession services; (3) publishing any price schedule or list for repossession services; (4) participating in any communications with representatives of other repossessor associations that relate to any price schedule or list for reposession services; or (5) engaging in any conduct the effect of which is to influence the formulation of any price schedule or list for repossession services.

Under Section VI defendant is prohibited, with two exceptions, from publishing any other reference to prices or fees for repossession services in its directory or other publications.

Under Section VII defendant is enjoined from expelling any TFA member or from denying or delaying any TFA membership application on the basis of (1) the population or other demographic information of a member's or an applicant's service area, or (2) the number of other TFA members or applicants who operate or may operate in that service area.

Under Section IX defendant is enjoined from any activity whose purpose or foreseeable effect is to allocate, protect, limit or otherwise influence the service area or territory in which any of its members operate or advertise that they operate.

Under Section XII defendant is enjoined from establishing or maintaining unreasonable fees for TFA membership.

B. *Defendant's Affirmative Obligations.* Under Section V defendant is required to publish in a prominent manner in the prefactory section of each TFA membership directory or other similar publication, a statement of compliance with the prices or fees provisions of the Judgment.

Under Section VIII defendant is required to eliminate any restrictions on TFA members concerning the manner or extent of advertising their service area in any publication.

Under Section X defendant is required to eliminate certain existing TFA membership requirements.

Under Section XI defendant is ordered to admit to membership any applicant who meets the following requirements: (1) ability to obtain and retain, in the commercial market, reasonable fidelity bonds; (2) licensure under all applicable state and local licensing laws; (3) certification that he or she has not been convicted of a felony within a period of up to ten years prior to his or her application for membership; (4) one year of experience as an active repossessor; and (5) a principal office location specifically for his or her repossession business during TFA membership.

Under Section XIII defendant is ordered to publish in the prefatory section of each TFA membership directory or other similar publication, certain information regarding the membership application process.

Sections XIV and XV require defendant to establish an antitrust compliance program which must include annual reporting to the Department of Justice and dissemination of this Judgment to each of its officers, directors, employees and members.

Under Section XVI jurisidiction is retained by the Court for purposes of enabling either of the parties to this Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for construction or implementation of this Judgment, for modification of any of the provisions, for enforcement or compliance, and for punishment of violations. Further Section XVII provides that the Judgment shall remain in effect until ten (10) years from date of entry.

C. *Scope of the Proposed Judgment.* The Judgment applies to defenant and to its officers, directors, members, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with defendant who have received actual notice of this Judgment by personal service or otherwise.

D. *Effect of the Proposed Judgment on Competition.* The terms of Sections IV and VI of the Judgment are designed to ensure that defendant's members will act independently in determining the prices or fees to charge for repossession services. Accordingly, the affirmative obligations of Sections V and XIV are directed toward informing defendant's clients, members, employees and others of this Judgment and of their obligations under the decree not to engage in the type of behavior alleged in the Complaint.

The terms of Sections VII and IX of the Judgment are designed to ensure that defendant will not restrict TFA memberships and geographic territories in which any of its members operate or advertise that they operate. Accordingly, the affirmative obligations of Sections VIII, X, XI, XIII and XIV are directed toward the establishment of fair, reasonable and objective criteria for admission to membership in any geographic area and for advertising by members.

Compliance with the Judgment should prevent collusion among defendant, its members and competitors in determining prices or fees to charge for repossession services and in unreasonably restricting TFA memberships and georgraphic territories in which TFA members operate or advertise that they operate.

IV

Remedies Available to Potential Private Plaintiffs

After entry of the Judgment, any potential private plaintiff that might have been damaged by any alleged violation will retain the same right to sue for monetary damages and any other legal or equitable relief that it may have had if the Judgment had not been entered. The Judgment may not be used, however, as *prima facie* evidence in private antitrust litigation.

V

Procedures Available for Modification of the Proposed Consent Judgment

The Judgment is subject to a stipulation between the Government and defendant which provides that the Government may withdraw its consent to the Judgment any time before entry of the Judgment. By its terms, the Judgment provides for the Court's retention of jurisdiction of this action to permit any of the parties to apply to the Court for such orders as may be necessary for its modification.

As provided by the Act, any person wishing to comment upon the Judgment may, for the statutory sixty-day comment period, submit written comments to John W. Poole, Jr., Chief, Special Litigation Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530. Any comments and the Government's response to them will be filed with the Court and published in the **Federal Register.** The Government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the Judgment.

VI

Alternatives to the Proposed Final Judgment

The alternative to the Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the Judgment to be of sufficient scope and effectiveness to make a trial unnecessary because it provides for all the relief prayed for in the Complaint.

VII

Determinative Materials and Documents

No materials or documents were considered determinative by the United States in formulating the Judgment. Consquently, none are being filed pursuant to the Act.

Dated: July 14, 1981.

Respectfully submitted,

Terrence F. McDonald,
Charles Jerome Ware,
Steven B. Kramer,
Attorneys, Antitrust Division, Department of Justice, Washington, D.C. 20530 (Telephone: (202) 633-3082).

[FR Doc. 81-21694 Filed 7-23-81; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

John Forrest Cornely, M.D.; Revocation of Registration Final Order

On June 19, 1981, the Administrator of the Drug Enforcement Administration (DEA) directed to John Forrest Cornely, M.D. (Respondent) an Order to Show Cause as to why DEA should not revoke his DEA Certificate of Registration AC1303279, issued to him under 21 U.S.C. 823. The predicate for the Order to Show Cause was the revocation of Dr. Cornely's medical license by the Kansas State Board of Healing Arts on April 19, 1980, thereby terminating his authority to prescribe, possess, dispense, administer or otherwise handle controlled substances in Kansas. Through counsel, Respondent waived his right to a hearing on the issues raised by the Order to Show Cause. Pursuant to 21 CFR 1301.54(c), the Acting Administrator publishes his Final Order on the record as it appears.

Having examined the record, the Acting Administrator finds that the Kansas State Board of Healing Arts revoked Respondent's license to practice medicine in Kansas. This action terminates Dr. Cornely's authority to possess, prescribe, dispense, adminster or otherwise handle controlled substances in Kansas. This Administration has consistently held that termination of a registrant's state authority to handle controlled substances requires DEA to revoke his DEA Certificate of Registration. See *Jack A. Braley, D.O.*, Docket No. 80-14, 45 FR 74596 (1980); *James Waymon Mitchell, M.D.*, Docket No. 79-16 44 FR 71466 (1979); *David Sachs, M.D.*, Docket No. 77-22, 42 FR 29112 (1977); *Kenneth E. Wilson, D.D.S.*, 46 FR 25018 (1981); *Henry Weitz, M.D.*, 46 FR 34858 (1981).

Counsel for Respondent states in his letter waiving Respondent's right to a hearing that there is not substantial evidence to support the allegations filed against Respondent. He also notes that the Kansas Supreme Court affirmed the revocation order. This Administration is

not the forum to determine whether the Kansas Board erred in its decision to revoke Dr. Cornely's medical license. The Healing Arts Board acted and the Kansas Supreme Court upheld that action. DEA is bound by the facts that Dr. Cornely's medical license was revoked.

It is the decision of the Acting Administrator to revoke Dr. Cornely's DEA registration. Accordingly, pursuant to the authority vested in the Attorney General by Section 824 of Title 21, United States Code, and redelegated to the Administrator of the Drug Enforcement Administration, the Acting Administrator revokes DEA Certificate of Registration AC1303279 issued to John Forrest Cornely, M.D., for the reason that on April 19, 1980, the Kansas State Board of Healing Arts revoked Dr. Cornely's license to practice medicine in Kansas, thus terminating his authority to possess, prescribe, dispense, administer or otherwise handle controlled substances in Kansas. This revocation is effective July 17, 1981.

Francis M. Mullen, Jr.,

Acting Administrator.

[FR Doc. 21660 Filed 7-23-81; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92-463 as amended), notice is hereby given of a meeting of Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: August 4, 1981, 10:00 a.m., C5320 Seminar Room 6, Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210

Purpose: To discuss trade negotiations and trade policy of the United States

This meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Meyer Bernstein, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565.

Signed at Washington, D.C., this 15th day of July 1981.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

July 15, 1981.

[FR Doc. 81-21707 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-28-M

Mine Safety and Health Administration

[Docket No. M-81-123-C]

G.M. & W. Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

G.M. & W. Coal Company, Inc., P.O. Box 112, Jennerstown, Pennsylvania 15547, has filed a petition to modify the application of 30 CRR 75,155(b)(1) (qualified hoisting engineer; qualifications) to its Grove No. 1 Mine located in Somerset County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that qualified electric hoisting engineers have at least one year's experience.

2. The Beco-Bahn 400 Road Railer hoisting system is normally operated automatically by the operator who sends radio signals from within the train to the hoist control panel located outside in the hoisting building. When mechanical or electrical problems cancel the automatic control, petitioner would like to have the operator travel to the surface hoist building and operate the unit as a conventional electric hoist.

3. In support of this request, petitioner states that:

a. All operators have in excess of one year as operators of this unit in the automatic mode but due to the infrequency of breakdowns, a very extensive amount of time would be required to obtain the one year experience as conventional electric hoist operators;

b. The operating controls within the train are very similar to the controls in the hoist house and petitioner believes that each of the operators has experience equivalent to one year as a hoisting engineer;

c. Operators of the hoist will be required to complete an outlined training plan on the reading of the rolling distance indicator, and the use of the radio communications between the hoist room and the mobile train unit;

d. The rolling distance indicator, located on the hoist control panel in plain view of the hoist operator, shall be checked for calibration and accuracy each working day. The radio and telephone communications shall also be checked daily between the mantrip unit and the hoist building.

4. Petitioner sates that the procedures outlined above will provide the same degree of safety to the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 24, 1981. Copies of that petition are available for inspection at that address.

Dated: July 16, 1981.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

FR Doc. 81-21713 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-126-C]

Price River Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Price River Coal Company, P.O. Box 629, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 5 Mine located in Carbon County, Utah. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The present electrical system has no history of trailing cable failure.

2. Petitioner states that short trailing cables create undue burden and added hazard in two entry (longwall development) mining. The five to six hundred feet back-end of the longwall will require secondary distribution centers and will also cause the high-voltage cables to be placed in the return air or in haulageways. All these are more difficult to protect and more dangerous than low-voltage trailing cables.

3. Petitioner employs an electrical program and testing equipment which exceeds the standard testing procedures on equipment; this program has been in use for six years and has been determined to improve electrical safety.

4. As an alternate method, petitioner will measure, within five percent accuracy, trip values on circuit-breakers over an extended length and provide a short circuit study and an analysis of short circuit protection. This program shall include initial testing of all such circuit breakers and re-testing as made necessary by repair or replacement.

5. Petitioner further states that short circuit study reduces circuit-breaker settings and the program of circuitbreaker testing will provide proper short circuit protection for these trailing cables.

6. Petitioner states that the proposed alternate method outlined above will provide the same degree of safety to the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 24, 1981. Copies of the petition are available for inspection at that address.

Dated: July 16, 1981.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-21714 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-120-C]

Ray Lucas and Partners Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Ray Lucas and Partners Coal Company, 525 West Centre Street, Donaldson, Pennsylvania 17981, has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Tracy Slope located in Schuylkill County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if a "makeshift" safety device were installed it would be activated on knuckles and curves, when no emergency existed, and cause a tumbling effect on the conveyance which would increase rather than decrease the hazard to the miners.

4. As an altenate method, petitioner proposed to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, which have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will at all times provide the same degree of safety to the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 24, 1981. Copies of the petition are available for inspection at that address.

Dated: July 16, 1981.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-21712 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-141-C]

Youngstown Mines Corp.; Petition for Modification of Application of Mandatory Safety Standard

Youngstown Mines Corporation, 3 Gateway Center 9 North, Pittsburgh, Pennsylvania 15263 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Dehue Mine located in Logan County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return entries be examined weekly for hazardous conditions.

2. The return entries were developed approximately 12 years ago utilizing roof bolts for support; such support has long since deteriorated and numerous roof falls have rendered these entries impassable.

3. As an alternative method, petitioner proposes to establish and maintain specified air monitoring stations. In support of this alternate method, petitioner states that:

a. Methane and air readings will be made by a certified person on a daily basis and the results recorded on a date board at each location;

b. Methane will not be permitted to accumulate in these returns; immediate investigation and corrective action will be taken if methane is present beyond permissible limits.

4. Petitioner states that the alternate method outlined above will provide the same measure of safety to the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 24, 1981. Copies of the petition are available for inspection at that address.

Dated: July 16, 1981.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-21711 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Revisions of Benchmarks for State Plan States

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice.

SUMMARY: This notice announces OSHA's intention to revise the benchmarks for occupational safety and health compliance officers for State Plan States. As a result of the decision in "AFL-CIO v. Marshall" 750 F. 2d 1030 (1978), OSHA was required by the

District Court for the District of Columbia to establish benchmarks for State plan staffing levels which reflect a fully effective enforcement level. While the agency set out these numbers in a report filed with the Court on April 25, 1980, the terms of that report require the agency to undertake a comprehensive review of the benchmark model to determine whether the benchmarks should be revised. OSHA has determined that the benchmarks should be revised and soon will publish the proposed revision process and the proposed new benchmarks for public comment. The new benchmarks, when finally issued by OSHA, will be in the form of a general statement of policy rather than a final rule.

FOR FURTHER INFORMATION CONTACT: Barbara Bryant, Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue N.W., Room N-3613, Washington, D.C. 20210, (202) 523-8045.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C. this 17th day of July 1981.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 81-21736 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-26-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 81-59; Exemption Application No. D-2513]

Exemption From the Prohibitions for Certain Transactions Involving T. Rowe Price Associates, Inc., Employee Stock Ownership Plan, Located in Baltimore, Maryland

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption exempts the exchange of T. Rowe Price common stock (Price Stock) owned by the T. Rowe Price Associates, Inc. Employee Stock Ownership Plan (the Plan) for Charles Center Properties, Inc. (Charles Center) common stock (Charles Center Stock) owned by T. Rowe Price Associates, Inc. (the Employer). The Plan will also receive cash from the Employer equal to the difference between the value of the Plan's Price Stock and the value of the Charles Center Stock.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216, (202) 523-7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 12, 1981, notice was published in the **Federal Register** (46 FR 31112) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for a transaction described in an application filed by the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been provided to all interested persons in order to comply with the notification requirements as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the exchange of the Plan's Price Stock for the Employer's Charles Center Stock and cash, provided the consideration received by the Plan is not less than the fair market value of the Plan's Price Stock at the date of consummation of the transaction.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 20th day of July 1981.

Ian D. Lanoff,

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

[FR Doc. 81-21750 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2087]

Proposed Exemption for Certain Transactions Involving the Aaron Satloff, M.D., P.C. Profit-Sharing Plan Located in Pittsford, N.Y.

AGENCY: Department of Labor.

ACTION: Notice of poposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of a stamp collection to the Aaron Satloff, M.D., P.C. Profit-Sharing Plan (the Plan) by Dr. Aaron Satloff (Satloff), a disqualified person with respect to the Plan. Since Satloff is the sole stockholder of Aaron Satloff, M.D., P.C. (the Employer) and the only participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code. The proposed exemption, if granted would affect the beneficiaries of the Plan and Satloff.

DATE: Written comments and requests for a public hearing must be received by the Department on or before August 24, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2087. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby gien of the pendency before the Department of an application for exemption from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Employer, pursuant to section 4975(c)(2) of the Code, and in accordance with procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722.

Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The plan is a profit sharing plan with one participant, Satloff. As of December 31, 1980, the Plan had net assets of approximately $114,500. Satloff and his wife are the trustees of the Plan and jointly maintain sole responsibility for the investment decisions of the Plan.

2. Satloff presently owns a stamp collection (the Stamps) which is comprised of French and French area issues in mint condition. a philatelic broker, Fred B. Widding, appraised the Stamps and determined that as of July 15, 1980, the Stamps had a fair market value of $34,006.

3. Satloff proposes to sell the Stamps to the Plan for $33,600. This price is less than the Stamp's appraised value of $34,006. Satloff expects the Stamps to substantially increase in value. The Stamps are presently insured to a value of $39,079 and after the sale will be kept fully insured in the Plan's name at Satloff's expense. The applicant represents that the difference between the purchase price of the Stamps and their appraised fair market value, if treated as an employer contribution, will not cause the annual additions to the participant's account to exceed the limitations of section 415 of the Code.

4. Mr. Fred C. Gregory (Gregory), a party unrelated to the Employer or Satloff, has been appointed to serve as investment manager for the Plan in connection with the purchase by the Plan of the Stamps. Gregory has received a Chartered Financial Analyst designation issued by the Financial Analyst Federation. Gregory represents that he is qualified to invest employee benefit plan assets in certain specialized areas such as stamps. Gregory has reviewed the Plan's funding objectives, its composition of current investments, and its needs for future liquidity and represents that the investment in the Stamps is in the best interests of the Plan and its participant and beneficiaries.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 4975(c)(2) of the Code because (a) the Plan will be acquiring an asset at a price less than its appraised market value; (b) the Stamps are expected to substantially increase in value; (c) the Stamps will be kept fully insured at Satloff's expense and the Plan will be the named insured; and (d) an independent, qualified party, Gregory, represents, that after a complete review of the Plan's portfolio, the purchase is in the best interests of the Plan and its participant and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Because Satloff is the only participant in the Plan and the sole shareholder of the Employer, it has been determined that there is no need to distribute the notice of pendency to interested persons.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or disqualified person from certain other provisions of the Code, including any prohibited transaction provisions to which the exemption does not apply; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722. If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale of the Stamps by Satloff to the Plan for $33,600 provided that this amount is not higher than the market value of the Stamps as of the date of sale.The proposed exemption, if granted, wil be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of July, 1981.

Ian D. Lanoff,

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

[FR Doc. 81–21740 Filed 7–23–81; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–2261]

Proposed Exemption for Certain Transactions Involving Construction Industry Retirement Plan of Rockford, Illinois, Located in Rockford, Illinois

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the entering into an arrangement to fund, and the funding of, long-term mortgage loans by the Construction Industry Retirement Plan of Rockford, Illinois (the Plan) in situations where the loans are arranged by and the borrower is receiving construction financing from a bank which is a service provider to the Plan. The proposed exemption, if granted, would affect the Plan, participants and beneficiaries of the Plan, the mortgage banking institution involved, contributing employers to the Plan, and any other persons participating in transactions to which the exemption might be applicable.

DATES: Written comments must be received by the Department on or before September 11, 1981.

ADDRESS: All written comments (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D–2261. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523–8884. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code. The proposed exemption was requested in an application filed by the Plan trustees, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a multi-employer, multi-trades plan, participants in which are employed in the construction industry. The Plan has approximately 3,169 participants. Plan assets total approximately $12,745,970 as of January 31, 1981.

2. The Board of Trustees (the Board) of the Plan is comprised of six members, three employer appointed and three union appointed. Fiduciary duties are shared by the Board members with two exceptions. First, the co-chairmen of the Board, one employer appointed and one union appointed, comprise the finance committee, which has initial authority in financial matters, including Plan investments. This authority is subject to review by the whole Board. Second, two of the Board members, one employer and one union, serve on a joint audit committee with two board members of the Construction Industry's Health & Welfare Plan Board of Trustees. This joint committee oversees the problems inherent in the collection of contributions from participating employers.

3. The Plan Trustees seek an exemption to invest up to 25% of the Plan's assets in first real estate mortgages on local commercial and industrial construction. Such Plan funds would be accumulated in an investment pool and deposited with the First National Bank and Trust Company of Rockford, Illinois (the Bank), who would act as mortgage banker. All mortgages

financed by the Plan will be placed through and serviced by the Bank. Funds set aside for real estate loans which have not been disbursed and all interest and principal payments received which have not been reinvested in such loans, shall be temporarily reinvested by the Bank, in liquid short-term investment vehicles as directed by the Plan's trustees.

4. Real estate loans shall be limited to commercial and industrial construction. Exemption for construction financing is not sought. Both new and readaptive use construction may be considered. Commercial construction does not include single or multi-family residential construction. Readaptive use construction refers to remodeling which changes the use of the structure.

5. Construction of the subject properties acting as security for the loans may be performed by contractors who are parties in interest or disqualified persons with respect to the Plan. In addition, the borrower may obtain construction financing from the Bank. Specifically, exemption is sought for commitments by the Plan to make long term mortgage loans in situations where the Bank is the construction lender. However, in no case will Plan assets be loaned to parties in interest.

6. The Bank will initially review all mortgage applicants and present to the Plan trustees for their final approval would be mortgagors who have passed the necessary tests imposed by the Bank prior to their serious consideration of a similar loan being extended by the Bank. Should the loan be accepted, the Bank is authorized to charge the borrower a loan origination fee as may be reasonable and customary under the circumstances.

All loans shall be reviewed by the Plan trustees and shall be accepted in writing by the Plan trustees prior to a loan commitment being made.

7. The process through which the Plan issues a commitment to make long-term financing can be summarized as follows.

A prospective borrower approaches the First National Bank & Trust Company of Rockford to discuss financing of an anticipated construction project. If the Bank reacts favorably to the project the Bank will prepare a loan offering for submission to potential lenders. This offering will be based upon the terms and conditions then prevailing in the area for such financing. The Trustees of the Plan, upon receiving such an offering, will review it. The Trustees will, in their sole discretion, accept or reject the terms of the offering or present a counter-proposal. If the Trustees are satisfied with a particular offering, or if the borrower accepts the Trustee's counter-proposal, the Trustees will issue a commitment on behalf of the Plan to provide permanent financing for the project.

The borrower may obtain construction financing through the Bank. The borrower, Bank (or other construction lender) and the Plan will become parties to an agreement which confirms their respective understanding that upon completion of the project the Plan will provide long-term financing.

Throughout construction, the short term lender will monitor the project, and upon its completion, will make the necessary inspections. At the loan closing, both mortgage and note are taken over by the Plan.

8. The Plan's criteria for accepting a mortgage financing proposal include the following. All loans will be secured by first real estate mortgages and no real estate mortgage loan will exceed 75% of appraised value. The maximum maturity date of any loan shall be 20 years with preference given for maturities of 15 years or less. All loans shall be negotiated and extended with a provision for calling and/or renegotiating the terms of the loan, primarily interest rates, each 5 years during the life of the loan.

If the proposed exemption is granted, the Plan would not invest more than 25 percent of its assets in mortgage loans and the Plan would not invest more than 20 percent of the assets so set aside in any one mortgage loan.

9. The Plan trustees regard investments in permanent mortgage loans on commercial real property as being particularly attractive. Such investments have proved to be an excellent medium for meeting the long-term investment objectives of principal preservation, investment return, stability of return and diversification.

The use of the Bank for servicing such loans is of benefit to the Plan by assuring availability of expert loan servicing at a lesser expense than would be required if the Plan were to service such loans itself.

10. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The applicant represents that long term mortgage loans provide stable investment returns at attractive yields;

(b) The Plan has rigorous standards for acceptance of any loan; and

(c) The trustees have determined that the transactions are appropriate for the Plan and in the best interests of the participants and beneficiaries of the Plan.

Notice to Interested Persons

Within twenty days of publication in the **Federal Register**, notice of the proposed exemption will be sent by mail to all contributing employers to the Plan, non-participating beneficiaries presently receiving payments from the Plan, and to each union, members of which are participants in the Plan, for conspicuous posting by such union. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the **Federal Register** and shall inform interested persons of their right to comment within the time period set forth in the notice of proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of

whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the entering into an arrangement to fund, and the funding of, long-term mortgage loans by the Plan in situations where the loans are arranged by and the borrower is receiving construction financing from the Bank which is a service provider to the Plan. Moreover, the foregoing exemption shall apply only if the following conditions are met:

(a) At the time the transaction is entered into, the terms of the tansaction are not less favorable to the Plan than the terms generally available in arm's-length transactions between unrelated parties.

(b) The Plan maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the fiduciaries of the Plan, records are lost or destroyed prior to the end of the six-year period, (2) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the sanctions imposed by section 4975 of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service;

(ii) Any employer, or duly authorized representative of such employer, of employees who are covered by the Plan;

(iii) Any employee organization, or duly authorized representative of such organization, members of whom are covered by the Plan;

(vi) Any participant or beneficiary of the Plan or any duly authorized representative of such participant or beneficiary.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of July, 1981.

Ian D. Lanoff,

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

[FR Doc. 81-21742 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2285]

Proposed Exemption for Certain Transactions Involving the Dial Import Corp. Employees Pension Trust Located in New York, N.Y.

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed cash sale by the Dial Import Corp. Employees Pension Trust (the Plan) to Mr. David Yeston, a fiduciary with respect to the Plan, of an undivided 10 percent interest in the Dakota Towers Joint Venture (the Joint Venture). The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan and Mr. David Yeston.

DATES: Written comments and requests for a public hearing must be received by the Department on or before September 10, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D–2285. The Application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of Mr. David Yeston, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a defined benefit plan covering nine participants as of December 29, 1980. At that date, Plan assets totalled $160,615.97 including $35,000 (book value) for the Plan's interest in the Joint Venture. Mr. David Yeston is the President and 50 percent shareholder of Dial Import Corporation (the Employer) and is a fiduciary with respect to the Plan.

2. Documents submitted with the application show that Mr. David Yeston

was the beneficial owner of a 10 percent interest in the Joint Venture as of December 31, 1968. On August 5, 1974, Mr. David Yeston sold his interest in the Joint Venture to the Plan for $35,000 cash, payable in one lump sum. The Joint Venture owns the land and apartment building known as Dakota Towers, which is located at 1106 St. Mary's Road, Winnipeg, Manitoba, Canada. The Employer does not rent or otherwise use space in the property owned by the Joint Venture.

3. It is represented that the Plan wishes to sell its interest in the Joint Venture due to its relatively low rate of return (approximately four percent per year). The Plan would reinvest the sale proceeds in hopes of realizing a higher rate of return in light of the investment opportunities available in today's market.

4. The other members of the Joint Venture were notified of the Plan's desire to sell its interest in the Joint Venture and the price and terms of the proposed sale and were given the opportunity to buy said interest. None of the other members offered to buy the Plan's interest in the Joint Venture. On November 21, 1979, the Plan's interest in the Joint Venture was listed with a licensed real estate agent in Winnipeg for a period of 90 days. It is represented that due to weak market conditions for this type of investment, resulting from overdevelopment and high interest rates in the Winnipeg area, the agent was unable to solicit any prospective purchasers for the property. On October 1, 1980, Dr. M. Kowall, the beneficial owner of another 10 percent interest in the Joint Venture, accepted an offer by Phoenix Enterprises Ltd. to purchase his interest in the Joint Venture for $70,000 (Canadian), payable 50 percent in cash within 30 days and the balance in the form of a five-year interest-bearing note. It is represented that these parties are in no way related to Mr. David Yeston, the Employer, or the Plan.

5. Mr. David Yeston proposes to repurchase the Plan's interest in the Joint Venture for the U.S. dollar equivalent of $70,000 (Canadian), payable in U.S. currency in a single lump sum. The applicant states that on March 16, 1981, $70,000 (Canadian) was equal to $58,898 (U.S. currency). The Plan would incur no expenses or sales charges in the proposed sale.

6. In summary, the applicant represents that the proposed sale meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) It is a one-time transaction for cash;

(b) It will enable the Plan to dispose of a relatively low yielding investment while realizing a substantial profit and to reinvest the sale proceeds to obtain a higher rate of return;

(c) The sales price is the same amount as the sales price of another identical interest in the Joint Venture, involving parties unrelated to the Plan, the Employer, and Mr. David Yeston;

(d) The Plan will incur no expenses or sale charges with respect to the proposed transaction; and

(e) The trustee has determined that the transaction is appropriate for the Plan and is in the best interests of the Plan and its participants and beneficiaries.

Notice to Interested Persons

On or before August 13, 1981, all Plan participants will be provided notice of pendency of the exemption by the posting of said notice for at least 35 days in a place where employee notices are normally posted. A copy of the notice will be mailed to each terminated participant with a vested interest within such 20-day period. A statement will be included with the notice informing said parties of their rights to comment and to request a hearing within the period specified in the notice.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale to Mr. David Yeston of the Plan's undivided 10 percent interest in the Joint Venture for $70,000 (Canadian), provided that this amount is not less than the fair market value of such interest at the time of the sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of July 1981.

Ian D. Lanoff,

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

[FR Doc. 81-21749 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1675]

Proposed Exemption for Certain Transactions Involving Employee Benefit Plans and 205 Columbia Corp. and Intermodal Equipment Associates Located in Seattle, Washington

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed purchases by Self-Employed Retirement Plans (Keogh Plans) and Individual Retirement Accounts (IRA's) of partnership interests in 205 Columbia Corporation (205) and Intermodal Equipment Associates (IEA). Both 205 and Foster and Marshall, Inc. (F and M), a party in interest with respect to the Plans, are wholly owned by the F and M Corporation (Parent). The Parent owns one-third of IEA. The proposed exemption, if granted, would affect the Keogh Plans and IRA's and the fiduciaries of the Keogh Plans and IRA's, 205, IEA and F and M.

DATES: Written comments must be received by the Department on or before September 8, 1980.

ADDRESS: All written comments (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216, Attention: Application No. D-1675. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Sandler, of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code. The proposed exemption was requested in an application filed on behalf of 205 and IEA, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

The original application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. 205 is a Washington corporation which is a general partner for various Washington limited partnerships formed to develop real estate. Development of real estate has been in the form of housing subdividions, condominiums, office buildings and business parks. Most of the limited partnerships have been offered and sold in offerings registered with the Securities and Exchange Commission and relevant state securities commissions.

2. IEA is a California corporation which offers subscriptions for the purchase of interests in marine dry cargo container programs to be managed by IEA as manager. IEA intends to lease the containers to ocean-going steamship companies. The containers will be managed by IEA pursuant to management programs under which IEA will set as the owner's agent for negotiating leases for the containers, obtaining insurance, arranging for maintenance and doing all other things necessary or desirable in connection with operation of the containers.

3. The applicants represent that F and M is a fully diversified investment firm headquartered in Seattle, Washington, with 38 offices in six Northwest states. F and M is wholly owned by the Parent. The Parent owns all of the stock of 205 and one-third of the stock of IEA.

4. By letter dated September 20, 1978, F and M received permission from the Internal Revenue Service (the Service) under the provisions of Code sections 401(d) and 408(a)(2) to serve as a custodian for the Keogh Plans and IRA's. In serving as custodian for such plans, F and M was authorized and acts as a passive custodian within the meaning of Temporary Income Tax Regulation section 11.401(d)(1)-(g)(1). As a passive custodian, F and M is authorized to acquire and hold particular investments only as directed by each individual participant in accordance with the terms of the custodial instruments.

5. F and M has established a prototype custodial account program for Keogh and IRA accounts (hereinafter also referred to as "Custodial Accounts"), and the plan and custodial account documents for such programs were submitted to the Service for a determination as to their qualified status under the pertinent provisions of the Code by determination letter requests dated December 7, 1978. The Service approved the request for the IRA accounts on August 31, 1979 and for the Keogh accounts on December 20, 1979.

An exemption is requested to permit the Custodial Accounts to purchase either securities issued by partnerships or other entities affiliated with 205 or interests in marine dry cargo container programs from IEA or other entities affiliated with IEA. No more than 25% of each Custodial Account's assets will be invested in 205 and IEA enterprises. An exemption is necessary because the Parent, with which 205 and IEA are affiliated, is a party in interest with respect to the Custodial Accounts by virtue of wholly owning F and M, which provides certain services to the Custodial Accounts.

7. F and M would serve as underwriter in selling interests in 205 partnerships and in offering subscriptions for interests in IEA in marine dry cargo container programs. F and M's underwriting services would be offered in addition to its services as a passive custodian for the Custodial Accounts. By letter dated October 15, 1979, the Department provided general information concerning the applicability of the multiple services statutory exemption under section 408(b)(2) of the Act and the regulation published thereunder (29 CFR 2550.408(b)(2)). It was therein stated that the trustees of the Custodial Accounts, or other appropriate fiduciaries must determine whether the conditions of section 408(b)(2) of the Act and the regulation thereunder are satisfied.

8. The applicants state that the Custodial Accounts have expressed interest in the 205 and IEA investments. They further state that products of 205 and IEA are not designed solely or primarily for Keogh and IRA Custodial Accounts, but are investments which have a broader market. In this regard, at least 50% of each 205 or IEA partnership or program shall be sold to parties which F and M does not serve as custodian. Also, the exemption would permit the Custodial Accounts to make purchases of the 205 and IEA investments in the same manner as other investors through the normal course of business.

9. In summary, the applicants state that the proposed transactions would meet the criteria of section 408(a) of the Act due to the following:

a. The Custodial Accounts' purchases of 205 and IEA investment products would be made in the same manner as other investors in the normal course of business.

b. It is represented that neither 205, IEA, the Parent nor F and M will have authority with regard to any Custodial Account assets which would make them fiduciaries with regard to any Custodial Account.

c. The Custodial Accounts are participant directed so that the responsibility for investment of Custodial Account assets rests solely with the individual participant.

d. The proposed transactions would facilitate a diversification of Custodial Account assets in investments that the accounts, due to their small size, may not otherwise be able to secure.

e. No more than 25% of each Custodial Account's assets will be invested in 205 and IEA partnerships or programs.

f. At least 50% of each 205 or IEA partnership or program will be sold to parties which F and M does not serve as custodian.

Notice to Interested Persons

Within fifteen days following publication in the **Federal Register**, notice of the proposed exemption will be mailed to all interested persons including each of the participants in the custodial accounts. The notice will contain a copy of the proposed exemption as published in the **Federal Register** and will include a statement advising them of their right to comment on the proposed exemption within the time period set forth above.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsiblity provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the purchase by the Custodial Accounts of either securities issued by partnerships or other entities affiliated with 205 or interests in marine dry cargo container programs from IEA or other entities affiliated with IEA, as described hereinabove.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of July 1981.

Ian D. Lanoff,

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

[FR Doc. 81-21748 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2257]

Proposed Exemption for Certain Transactions Involving the Joliet Medical Group, Ltd. Employees Retirement Plan and Trust Located in Joliet, Illinois

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt (1) a purchase of a medical clinic located at 2100 Glenwood Ave., Joliet, Illinois (Clinic Facility), from the Joliet Medical Group Investment Partnership (the Partnership) by the Joliet Medical Group, Ltd. Employees Retirement Plan and Trust (the Trust), (2) an extension of credit by the Partnership to the Trust in such purchase and (3) a lease of the Clinic Facility from the Trust to the Joliet Medical Group, Ltd. (the Employer), the sponsor of the Trust. The proposed exemption, if granted would affect participants and beneficiaries of the Trust, the Partnership, the Employer and other persons participating in the proposed transactions.

DATES: Written comments and requests for a public hearing must be received by the Department, on or before September 3, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2257. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Dr. Wayne M. Kassel, Dr. Gerard Cerniak and Dr. Jack Bellone (the Trustees), the Trustees of the Trust, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Trust is a profit sharing plan. As of August 31, 1979, the Trust had assets of $1,344,814 and approximately 70 participants. The Trustees are partners in both the Employer and the Partnership.

2. The Employer is an Illinois professional corporation incorporated on November 29, 1971 whose principal place of business is the Clinic Facility. The employer is engaged in the general practice of medicine and maintains a staff consisting of 20 physicians and 92 nurses and administrative personnel.

3. The Partnership was formed on June 1, 1975 under the laws of the State of Illinois. All of the partners that comprise the Partnership are also equity owners of the Employer. The Partnership's principal business is the ownership of the Clinic Facility.

4. The Trustees are requesting an exemption that would permit the Trust to purchase the Clinic Facility from the Partnership and simultaneously lease the Clinic Facility to the Employer. The details of the proposed transactions are as follows:

(a) The proposed purchase price will be $2,100,000 which will comprise the total of the existing liens (the Existing Liens) on the Clinic Facility ($1,808,229.73 as of July 1, 1981) plus a note of $291,770.27 for the equity of the Partnership. The Trust will not be required to make any down payment. The Trust has obtained an independent appraisal (the Batis Appraisal) of the Clinic Facility prepared by Edward J. Batis and Associates, Inc., located in Joliet, Illinois which represents that the market value of the Clinic Facility, as of November 28, 1980, was $2,100,000.

(b) The Existing Liens will remain obligations of the Partnership with the conveyance of the Clinic Facility being made "subject to" such liens. The Trust would, however, make the payments required to satisfy such existing indebtedness, subject to the conditions described in paragraph (e) below.

(c) The Partnership will be given a note by the Trust in the amount of $291,770.27 for its equity part of the purchase price. Such note will accrue interest at an interest rate of 6% per annum. The payment of such note and the continued payment of the payments on the Existing Liens will be secured by a deed of trust (Mortgage) on the Clinic Facility.

(d) The Employer will enter into an 18 year triple net lease with the Trust leasing the Clinic Facility to the Employer. The initial monthly rent as determined by the Batis Appraisal will be $263,000 and the rent will be updated every three years. A new appraisal of the Clinic Facility by an independent qualified appraiser will be made every three years to determine the updated fair market rent. Notwithstanding the appraised value of the Clinic Facility, there will be a minimum guaranteed rent of $263,000. The applicants represent that the annual obligations of the Trust, which will consist of the Existing Liens and the payment on the equity note (totaling $262,835.62) will be fully amortizable out of the lease rentals and no current or future Employer contributions will be needed for that purpose. The applicants further represent that at all times during the 18 year lease term, the lease will generate more than enough cash to cover all the outstanding principal and interest of the Trust, pay any income taxes due on the Trust's unrelated debt-financed income pursuant to section 514 of the Code and fully amortize all obligations of the Trust within the 18 year lease term.

(e) In the event the Employer should default on its lease obligations to the Trust, the Trust would, at its election, have no further obligation of any kind to satisfy the existing Mortgage indebtedness or to make any further payment against its purchase obligation to the partnership. The Trust at its sole discretion could: (1) sell the premises and pay off the purchase obligations without incurring any additional liability; (2) lease the premises to another party; (3) void the lease, return the premises to the seller and walk away from the unpaid balance of the purchase obligations with no additional liability.

5. Prior to the Trust entering into the proposed transactions, an independent party, the Union National Bank and Trust Co. (the Bank) of Joliet, Illinois will certify that the transactions are appropriate and in the best interests of the Trust and that the terms of the proposed transactions are at least equal to what the Trust would receive from an unrelated party in similar transactions. In addition, the Bank will monitor the transactions and will have the responsibility for exercising the rights of the Trust in the proposed transactions.

6. In summary, the Trustees represent that the proposed transactions will satisfy the criteria of section 408(a) of the Act because (1) the Trustees of the Trust have determined that the proposed transactions are appropriate for the Trust and in the best interests of its participants and beneficiaries; (2) an independent party will approve the transactions prior to the Trust entering into them and will monitor the transactions during their continuance; (3) the transactions will allow the Trust to obtain a valuable property at the appraised value; (4) the transactions will allow the Trust to purchase the Clinic Facility with no down payment and with all purchase obligations amortized out of rentals; (5) the transactions will allow the Trust, at its sole discretion, in the event of a default of the lease payments to (a) sell the property and pay off all purchase obligations (b) lease the

property to another party, or (c) void the lease, return the premises to the seller and walk away from the unpaid balance of the purchase obligations with no personal liability; and (6) the sales price and rental payments are determined by independent appraisals.

Notice to Interested Persons

Within ten days of its publication in the **Federal Register** a copy of the notice of pendency and a statement advising participants and beneficiaries of the Trust of their right to comment or request a hearing will be mailed to all participants and beneficiaries of the Trust.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restriction of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the purchase of the Clinic Facility by the Trust from the Partnership for $2,100,000 provided that the price is not more than the fair market value of the Clinic Facility at the time of sale; (2) the extension of credit by the Partnership to the Trust in such transaction provided that the terms of such loan are at least as favorable to the Plan as those which the Plan could obtain in an arms-length transaction; and (3) the lease of the Clinic Facility by the Trust to the Employer for 18 years provided that the lease payments are not less than fair market rental value.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of July 1981.

Ian D. Lanoff,

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

[FR Doc. 81-21743 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2204]

Proposed Exemption for Certain Transactions Involving Lloyds Bank California Located in Los Angeles, California

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the use of assets of employee benefit trusts (Trusts), for which Lloyds Bank California (the Bank) serves as corporate co-trustee, for permanent loans to persons who will use the loan proceeds to pay off construction loans originated by the Bank. The proposed exemption, if granted, would affect the Bank and Trusts and their participants, beneficiaries and fiduciaries.

DATES: Written comments must be received by the Department on or before August 24, 1981.

ADDRESS: All written comments (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2204. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of

section 406(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code. The proposed exemption was requested in an application filed by the Bank, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Bank is a corporate co-trustee for the Trusts. Under the terms of a corporate co-trustee agreement, the Bank performs strictly custodial duties which include holding, receiving, handling and disbursing funds as instructed by the appropriate Trust fiduciary. The Bank has no discretionary authority with regard to the management or disposition of any Trust assets.

2. As a part of the Bank's lending activities, the Bank makes construction loans to developers of real property (Borrowers). The Borrower, without the assistance of the Bank, obtains a commitment for a permanent loan to pay off the construction loan at such time as the construction of the improvements on the subject real property is completed. The permanent lender may, in some cases, be known to the Bank prior to its constuction loan commitment. The Borrower may obtain a permanent loan commitment from one of the Trusts either at a time prior to the Bank's commitment to make a construction loan or at a time after the Bank has committed to make a construction loan. The Trust would be aware of the identity of the Borrower because this would be disclosed on the permanent loan application.

3. A prohibited transaction may arise from the fact that the Trust fiduciaries would be entering into permanent loan commitments with the knowledge that the permanent loan proceeds would be utilized to pay off the Bank's construction loan. It is represented that the Bank plays no role in securing pemanent loans for its construction loan customers. It is further represented that there is no scheme or arrangement between the Bank, the Trusts or the Borrowers regarding construction and permanent loan financing.

4. It is represented that investment by employee benefit plans in real estate ventures as permanent lenders is common in the current real estate financing market. The applicant asserts that an exemption is appropriate for the transaction described herein because of the lack of potential for abuse and because a denial would unduly restrict a Trust's choice of potential Borrowers to those who have not secured a construction loan from the Bank, which is merely a custodian for the Trusts.

5. In summary, it is represented that the proposed transactions satisfy the statutory criteria of section 408(a) for the following reasons:

a. The Bank is a custodian with no discretionary authority regarding the management or disposition of the assets of the Trust;

b. The Trust's fiduciaries would make all investment decisions on the Trust's behalf, including all decisions relating to the proposed transactions;

c. The Bank would play no role in securing permanent loans for its construction loan customers; and

d. It is represented that there would be no scheme or arrangement between the Bank, the Trusts or the Borrowers regarding construction and permanent loan financing.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1) (E) and (F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the use of assets of the Trusts for permanent mortgage loans to the Borrowers, who will use the loan proceeds to pay off construction loans originated by the Bank.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of July 1981.

Ian D. Lanoff,

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

[FR Doc. 81-21747 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2552]

Proposed Exemption for Certain Transactions Involving Merrill Lynch Realty Management, Inc.; Located in New York City, N.Y.

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption involves certain aspects of the proposed provision of real estate services by Merrill Lynch Realty Management, Inc. (Merrill Lynch Realty) and its affiliates to insurance companies (Insurance Companies) maintaining pooled separate accounts in which employee benefit plans invest. The proposed exemption, if granted, would affect Merrill Lynch Realty and its affiliates, the Insurance Companies and the participants and beneficiaries of the employee benefit plans that are invested in the pooled separate accounts.

DATES: Written comments and requests for a public hearing must be received by the Department on or before August 28, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216, Attention: Application No. D-2552. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Small of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(b) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code. The proposed exemption was requested in an application filed by Merrill Lynch Realty and its affiliates, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application of file with the Department for the complete representations of the applicant.

1. Merrill Lynch Realty is a wholly-owned subsidiary of Merrill Lynch Realty Associates, Inc. which is a wholly-owned subsidiary of Merrill Lynch & Co. which is a corporation that provides diversified financial services. Merrill Lynch Realty provides a full line of real estate management services covering the full life cycle of properties or of the owner's involvement in a property. Such services include conceptual planning, zoning, development, evaluation of existing properties, physical and financial management, marketing, leasing, brokerage and disposition. In addition, on a case-by-case basis, Merrill Lynch Realty may evaluate, select and supervise on-site personnel; structure and manage rental and leasing programs; and direct the efforts of architects and builders in the construction phases of developing a property. Merrill Lynch Realty's scope encompasses properties in many locations around the country, including office buildings, shopping centers, apartment buildings, motels, primary residential communities, and land. Merrill Lynch Realty has formed and will continue to form a number of subsidiaries throughout the United States. The state-by-state incorporation of subsidiaries of Merrill Lynch Realty is used to facilitate compliance with the real estate laws in the jurisdictions in which Merrill Lynch Realty conducts its activities. The wholly-owned subsidiaries of Merrill Lynch Realty provide essentially the same services as Merrill Lynch Realty.

2. Insurance Companies are becoming increasingly interested in investing in real estate because their employee pension benefit plan trust department customers are interested in diversifying their investments into real estate. Because of the difficulties encountered in connection with the direct ownership of real estate by employee pension benefit plans, plan fiduciaries are exhibiting an interest in participating in Insurance Company-maintained pooled separate accounts (Pooled Separate Accounts) that invest in real estate.

3. Insurance Companies have indicated to Merrill Lynch Realty that they would like to establish Pooled Separate Accounts for the purpose of investing in real estate, but believe they do not have the staffing necessary to search the country for acceptable properties. Customarily, this function is provided by licensed real estate brokers. Merrill Lynch Realty represents that the general solicitation of brokers might result in a significant number of submissions and inquiries from brokers requesting an opportunity to present properties, many of which may not conform to such Insurance Company's investment guidelines. Merrill Lynch Realty represents that it would be more efficient, and effective for such Insurance Companies to engage a broker with national and international contacts on an exclusive basis. An exclusive brokerage arrangement will permit the exclusive broker to screen properties and to make an initial determination with respect to which properties would be brought to the Insurance Company's attention in accordance with guidelines established by the Insurance Company.

4. Merrill Lynch Realty and its affiliates are requesting an exemption that would allow them to enter into an agreement (the Proposed Agreement) with Insurance Companies which are independent of Merrill Lynch Realty and its affiliates in which Merrill Lynch Realty and its affiliates would serve as the Insurance Company's exclusive real estate broker for such Insurance Company's Pooled Separate Account and to be compensated for such brokerage.

5. Pursuant to the Proposed Agreement, in the event that the Insurance Company purchases a property which was brought to its attention by Merrill Lynch Realty, the latter will receive standard negotiated brokerage fees from the seller of such property. In the event that Merrill Lynch Realty does not receive a brokerage fee

from the seller, under certain circumstances, the Insurance Company may determine that the Pooled Separate Account will pay the brokerage fee. If the Insurance Company decides to sell a property held by its Pooled Separate Account, Merrill Lynch Realty will be called upon to find a purchaser and, in such case, it will be paid a fee for such brokerage by the Pooled Separate Account.

6. An Insurance Company entering into the Proposed Arrangement with Merrill Lynch Realty and its affiliates will establish written investment guidelines (Investment Guidelines) for its Pooled Separate Account. Neither Merrill Lynch Realty nor any affiliate will be involved in the formulation of such Investment Guidelines. If Merrill Lynch Realty is presented with Investment Guidelines it determines to be inappropriate, Merrill Lynch Realty will suggest that the Insurance Company retain the services of a non-affiliated entity in lieu of Merrill Lynch Realty. Pursuant to the Proposed Agreement, Merrill Lynch Realty will use its best efforts to locate and bring to the attention of the Insurance Company properties which appear to meet the Investment Guidelines. In connection with its presentation of such properties to the Insurance Company, Merrill Lynch Realty will provide the Insurance Company with the information the Insurance Company deems necessary for it to determine whether such property should be acquired. In addition, Merrill Lynch Realty will make certain disclosures. To the extent that Merrill Lynch Realty is aware that it or any affiliate is an affiliate of the seller, such relationship will be brought to the attention of the Insurance Company. Similarly, Merrill Lynch Realty will disclose whether it or any affiliate is a service provider with respect to the Property, who will be paying the brokerage commission and whether any portion of such commission will be shared with an affiliated or non-affiliated cooperating broker.

7. Although Merrill Lynch Realty will present properties to the Insurance Company, the Proposed Agreement specifically provides that the Insurance company will not ask Merrill Lynch Realty to recommend any property as being appropriate or inappropriate for the Pooled Separate Account or to otherwise advise as to the value of any property. Merrill Lynch Realty management will merely submit properties to the Insurance Company (along with the information required by such Insurance Company and the appropriate disclosures) for review and approval or rejection. The Proposed Agreement provides that the Insurance Company, in its sole discretion, must determine whether or not the property is an appropriate investment for its Pooled Separate Account. The applicants are not requesting relief from section 406(a) of the Act. The applicants represent that the proposed transactions are exempted from section 406(a) of the Act by the statutory exemption provided by section 408(b)(2) of the Act. Notwithstanding the above, Merrill Lynch Realty represents that it may be deemed to be a fiduciary as defined in section 3(21)(A) of the Act with respect to the employee benefit plans that invest in the Pooled Separate Accounts and therefore may require relief from section 406(b) of the Act.

8. Merrill Lynch Realty represents that it is a sophisticated entity with a considerable amount of expertise in the real estate industry and that the requested exemption is in the interests of plans participating in Pooled Separate Accounts because the proposed arrangement will permit benefit plans to indirectly invest in real estate without committing a disproportionate amount of plan assets in real estate in a particular district or in a particular class of property. In addition to providing diversification, employee benefit plans will be able to participate in the real estate market with the benefit of experts in the acquisition and disposition of real estate and in the management thereof. Merrill Lynch Realty further represents that (1) it is subject to state laws and the rules and regulations relating to the conduct of real estate brokerage activities; (2) Insurance Companies maintaining Pooled Separate Accounts in which employee benefit plans participate are fiduciaries subject to the rules and regulations of the Act; and (3) the Pooled Separate Accounts are subject to the requirements of state law and Section 801(g) of the Code.

9. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because: (1) The terms of the transactions will be negotiated at arms length between two unrelated and sophisticated parties; (2) the Insurance Company will make an independent determination whether or not such transactions will be entered into; (3) Merrill Lynch Realty and its affiliates are subject to the state laws and rules and regulations relating to the conduct of real estate brokerage activities; (4) the Pooled Separate Accounts are subject to the rules and regulations of the Act and certain state law; and (5) it will allow certain employee benefit plans to invest in real estate by using Pooled Separate Accounts.

Notice to Interested Persons

This notice of pendency will constitute the only notice to interested persons because the identity of the interested persons that will be affected by the proposed exemption is not known at this time.

General Information

The attention of interested persons is directed to the following: (1) the fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(a) of the Act and section 4975(c)(1)(A) through (D) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to

the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and 4975(c)(1)(F) of the Code shall not apply to: the provision of real estate brokerage services as described above and the receipt of commission with respect to such services my Merrill Lynch Realty and its affiliates from Insurance Companies maintaining Pooled Separate Accounts.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of July 1981.

Ian D. Lanoff,

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

[FR Doc. 81-21745 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2355]

Proposed Exemption for Certain Transactions Involving the Metex Corporation Employees Retirement Plan Located in South Plainfield, New Jersey

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt certain proposed loans of money by the Metex Corporation Employees Retirement Plan (the Plan) to Metex Corporation (the Employer), the sponsor of the Plan. The proposed exemption, if granted, would affect the Employer, the Plan and its participants and beneficiaries and other persons participating in the proposed transactions.

DATES: Written comments and requests for a public hearing must be received by the Department on or before September 3, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2355. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telephone (202) 523–7352. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Employer and trustees of the Plan, pursuant to section 408(a) of the Act and section 4975(c)2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is a defined benefit plan with approximately 309 participants. As of June 30, 1980, the Plan had total net assets of $806,291. Investment decisions for the Plan are made by five trustees who are also officers of the Employer. The Employer is a leading manufacturer of industrial products employing knitted wire materials technology.

2. The Employer and the trustees of the Plan are requesting an exemption to allow the Plan to enter into a loan agreement (the Loan Agreement) with the Employer, whereby the Plan will periodically loan certain amounts of money to the Employer. The aggregate of the outstanding balances of all loans made under the Loan Agreement at any point in time during the duration of the Loan Agreement will not be greater than the lesser of $350,000 or 35% of the assets of the Plan. All loans made under the Loan Agreement would be made over a five year period, the first day of which would be the date the grant of an exemption for the Loan Agreement is published in the **Federal Register** All of the proposed loans will nature and become due and payable on or before the last day of such five-year period. Each individual loan would have a maturity of one year. The interest rate for any loan granted under the Loan Agreement will be a floating rate equal to ½% above the prime rate charged by the United Jersey Bank but in no event less than 10%. Principal and interest payments will be made in equal quarterly installments.

3. Mr. Victor P. Di Leo (Di Leo) will be given the authority on behalf of the Plan to approve the Loan Agreement and to approve and monitor any loans made under the Loan Agreement. Di Leo will be authorized to accelerate any loan payment, to collect principal and interest payments on any loan, to enforce collection on any loan and to obtain the security interest called for with respect to collateral to be given as security for such loans. The Employer represents that no loan will be made under the Loan Agreement unless Di Leo represents that the terms of the loan are at least as favorable to the Plan as those which the Plan could obtain from an unrelated party. Di Leo is totally independent of the Employer and the Plan and was formerly chairman of the board and president of the First National Bank of Piscataway, New Jersey and is presently a director of Commercial Trust Company of New Jersey.

4. Each loan made under the Loan Agreement will be secured by marketable securities (the Securities) owned by the Employer. The Securities consist mostly of shares of preferred stock of major utility companies located throughout the United States. The Employer represents that any substitution for any of the Securities made during the duration of the Loan Agreement will be with marketable securities rated no less than "A" by Standard and Poor's. As of December 31, 1979, the Securities had a market value of $2,620,546. Every three months throughout the duration of the Loan Agreement Di Leo will determine the market value of the Securities to assure that the market value of the Securities pledged to the Plan will be maintained at at least 200% of the outstanding balance of all loans made under the Loan Agreement.

5. In summary, the applicants represent that the Loan Agreement satisfies the statutory criteria of section 408(a) of the Act because: (1) Di Leo, an independent party, will represent that the proposed Loan Agreement is in the best interests of the Plan; (2) Di Leo will approve and monitor each loan made under the Loan Agreement; (3) the Loan Agreement will be for a relatively short duration; and (4) each loan made under the Loan Agreement wil have a high rate of interest with a floor of 10% per annum and will at all times be secured by the Securities which at all times will be maintained in the amount of at least 200% of the balance of all loans made under the Loan Agreement.

Notice to Interested Persons

Notice will be given to all participants and beneficiaries of the Plan within seven days of the publication of the notice of pendency in the **Federal Register**. Such notice will include a copy of the notice of pendency as it appears in the **Federal Register** and a statement informing interested persons of their right to comment or request a hearing before the Department within the time period indicated in the notice of pendency. Notice will be provided by mail or by posting in the Employer's place of business in a location where notices are usually posted.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provsions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loans of money under the Loan Agreement by the Plan to the Employer for a period of five years from the date the grant of an exemption is published in the **Federal Register** provided that the aggregate of the outstanding balances of all such loans at any point in time shall not exceed the lesser of $350,000 or 35% of the assets of the Plan, and also provided that terms of the transactions are not less favorable to the Plan than those obtainable in arm's-length transactions with an unrelated party.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of July 1981.

Ian D. Lanoff,

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

[FR Doc. 81-21744 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1814]

Proposed Exemption for Certain Transactions Involving the Norris, McLaughlin & Marcus, P.A. Profit Sharing Plan Located in Somerville, New Jersey

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt (1) a loan of $23,790 (the Loan) by the Norris, McLaughlin & Marcus, P.A. Profit Sharing Plan (the Plan) to Norris, McLaughlin & Marcus, P.A. (the Employer), a party in interest with respect to the Plan; and (2) the personal guarantees of the Employer's obligations pursuant to the Loan by eight shareholders of the Employer. The proposed exemption, if granted, would affect the participants and beneficiaries

of the Plan, the Employer, and any other persons participating in the transactions.

DATES: Written comments and requests for a public hearing must be received by the Department on or before August 31, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-1814. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of the Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan with approximately 13 participants. As of November 1980, the Plan had assets valued at approximately $395,182. The Peapack-Gladstone Bank (the Bank) is the trustees of the Plan and has complete authority to make investment decisions for the Plan. The Bank is completely independent of the Employer, other than serving as trustee of the Plan, and does not have a banking relationship with the Employer. The Employer is a law firm which as of September 30, 1980, had a net worth of approximately $118,000.

2. The applicant is requesting an exemption to allow the Plan to engage in the Loan with the Employer. The Loan amount of $23,790 will represent approximately six percent (6%) of the Plan's assets. The Proceeds from the Loan will be used by the Employer to purchase a word processing system (the Equipment). The Loan will be repaid by the Employer in eight (8) equal quarterly installments and will bear an interest rate two (2) percentage points above the prime rate as quoted by the Franklin State Bank, Somerset, New Jersey, on the date of each quarterly payment.

3. The Loan will be secured by a purchase money security interest in the Equipment, perfected by the filing of a financing statement with the appropriate State agencies. The Loan will be further secured by providing the Plan a first security interest in certain furniture and other tangible personal property (the Personal Property) owned by the Employer. Mr. George Liebenberg of Robert Williams, Inc. Office Furniture Systems & Design, an independent appraiser, determined that the Personal Property, as of May 4, 1981, had a fair market value not less than $100,000. The Employer warrants that it has good and marketable title in the Personal Property and warrants to maintain such title in the Personal Property and Equipment (when purchased) throughout the term of the Loan. The Equipment and the Personal Property will be kept fully insured at the Employer's expense and the Plan will be entitled to any proceeds from such insurance.

4. Additional protections will be provided by the personal guarantees of the Employer's obligations pursuant to the Loan by eight shareholders of the Employer. Each shareholder represents that his or her net worth is in excess of the amount of the Loan.

5. The Bank has determined that the Loan will be in the best interests of the Plan. The Bank will completely monitor the terms and conditions of the Loan and will be empowered, inter alia, to pursue collection procedures in the event of default. The Bank will ensure that throughout the term of the Loan the above described collateral securing the Loan will have a value not less than 200 percent of the outstanding Loan balance.

6. In summary, the applicant represents that the Loan will satisfy the criteria of section 408(a) of the Act because (a) the Loan will represent approximately six percent (6%) of the Plan's assets and will be for a term of two (2) years; (b) the Loan will yield a high rate of return to the Plan; (c) the Plan will have a perfected first security interest in insured collateral which will have a value throughout the term of the Loan not less than 200 percent of the outstanding Loan balance; (d) the Bank, a party independent of the Employer, represents that the Loan is in the best interests of the Plan and will completely monitor the terms and conditions of the Loan; and (e) eight shareholders of the Employer will personally guarantee the repayment of the Loan.

Notice to Interested Persons

Within three days after its publication in the **Federal Register** a copy of this notice of pendency will be posted in a common area of the Employer's office. Such notice will inform all interested persons of their right to comment on or request a hearing regarding the requested exemption.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the emloyees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its

participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the Loan to the Employer by the Plan as described above provided that the terms and conditions of the Loan are not less favorable to the Plan than those obtainable in a similar transaction with an unrelated third party; and (2) the personal guarantees of the Employer's obligations with respect to the Loan by eight shareholders of the Employer.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of July 1981.

Ian D. Lanoff,

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

[FR Doc. 81–21741 Filed 7–23–81; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–1998]

Proposed Exemption for Certain Transactions Involving the Pay Less N.W. Profit Sharing Plan Located in Wilsonville, Oregon

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the contribution to the Pay less N.W. Profit Sharing Plan (the Plan) by the Pay Less Drug Stores Northwest, Inc. (the Employer) of a master lease (the Master Lease) and certain parcels of real property (the Properties). The proposed exemption, if granted, would affect the Employer, the Oregon Bank of Portland, Oregon who is the trustee of the Plan (the Trustee), the Plan, its participants and beneficiaries and other persons participating in the transactions.

EFFECTIVE DATE: April 30, 1980 for the contribution of the Master Lease and the Properties.

DATES: Written comments and requests for a public hearing must be received by the Department on or before Sept. 3, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. D–1998. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Louis Campagna of the Department, telephone (202) 523–7352. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406 (a), 406 (b) (1) and (b) (2) of the Act and from the sanctions resulting from the application of section 4975 (a) and (b) of the Code, by reason of section 4975 (c) (1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer pursuant to section 408 (a) of the Act and section 4975 (c) (2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exermption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Employer is one of the largest retail drug store chains in the Pacific Northwest with sales for 1979 totaling $380,000,000. The Plan is a defined contribution profit sharing plan with total assets, as of December 31, 1979, of $6,691,392.87 and 2,543 participants. The Trustee is independent of the Employer.

2. The Lancaster Mall Shopping center (the Mall) located in Salem, Oregon was originally developed by the Employer in 1968. On June 1, 1971, the Employer sold certain of its interest in the Mall to Second Basingstoke Properties, Inc. (Basingstoke), a corporation unrelated to the Plan or the Employer. Simultaneously with the sale, Basingstoke and the Employer entered into the Master Lease. The Master Lease was for a 30 year period expiring in 2001 and covered 33 units of retail space in the Mall. Subleases by the Employer under the Master Lease have been negotiated with the individual tenants of all 33 retail units with individual terms to expire at various times until 2001. The Properties were owned by the Employer and consist of three buildings in the Mall. The Properties have been leased by the Employer to three tenants; the U.S. National Bank, General American Theaters and the Oregon Mutual Saving Bank, for terms to expire in 1993, 1996, and 2016, respectively. None of the 33 sublessees of the Employer for the retail

units covered by the Master Lease or the lessees of the Properties are related to the Plan or the Employer. The Master Lease and Properties comprise 60 percent of the Mall. The remaining 40 percent of the Mall has been conveyed by the Employer to an unrelated party.

3. On April 24, 1980, Bullier & Bullier (Bullier) of Portland, Oregon, an independent appraiser, determined the value of the Master lease and the Properties, as of October 15, 1979, to be $3,320,000 and $450,000, respectively. The Employer discounted those figures by approximately 10 percent to arrive at conservative contribution values, as of April 30, 1980, for the Master Lease and Properties of $2,994,000 and $406,000, respectively. On April 30, 1980, the Employer contributed to the Plan the Properties and the Master Lease. When the Properties and the Master Lease were contributed to the Plan, $1,125,000 was allocated to a contribution for the year ending December 31, 1979. The balance of $2,275,000 was allocated as an advance against contributions for the year ending December 31, 1980. The applicants represent that because the contribution was made in April of 1980, the Plan had use of $2,275,000 of assets that it would not otherwise have received until the following year. Also, the contribution was larger than if it would have been made in cash. After contribution on April 30, 1980 of the Master Lease and the Properties, the assets of the Plan totaled $10,091,393. The Trustee represents that, at the time, the contribution of the Master Lease and the Properties was in the best interests of the Plan.

4. The individual subleases and leases negotiated under the Master Lease and on the Properties have provisions for minimum rentals due monthly and "percentage of revenues" provisions that should cause future rental incomes to increase as unit sales increase. All relevant leases and subleases are "net leases" in which the tenants of the Mall pay all common area maintenance and Mall maintenance expenses as well as their share of taxes or tax increases.

5. Bullier estimates that the effective annual gross income on the Master Lease is $575,000. Based on the fair market values, the annual rates of return on the Master Lease and Properties were calculated by the Employer to be 10.1 percent and 15.4 percent, respectively. It is anticipated that the actual rate of return for the Master Lease and the lease of the Properties will be higher as percentage rentals increase and as the leases and subleases are periodically renegotiated on their expiration dates.

6. Prior to the contribution of the Master Lease and Properties to the Plan, the Employer acted as property manager with respect to the Mall. The Employer's fee for this service was 2% of all rents the Employer collected. At the time of contribution, the Trustee selected the Employer to continue as property manager with respect to the Properties and the Master Lease. The Trustee represents that its selection of the Employer as property manager was in the best interests of the Plan as the fee charged by the Employer was below that charged by other property managers in the area for similar services. The Trustee represents that it will test the market annually to determine whether the fee charged by the Employer is at least equivalent to property management rates then being charged in the area and will take all steps necessary, including the removal of the Employer as property manager, if the Employer's fee is determined to be excessive.

7. The Employer will guarantee the Plan against any loss in any future disposition by the Plan of the Master Lease and the Properties. If the Properties and the Master Lease are sold by the Plan at any time during the duration of the Master Lease, the Employer will pay to the Plan any amount which the sales price falls below the $3,400,000 contribution value. Also, if the annual effective gross income of the Master Lease falls below $575,000 at any time during the term of the Master Lease, the Employer will pay to the Plan the difference at the end of the year.

8. The applicant represents that the proposed criteria of section 408(a) of the Act are met in that:

(a) The Trustee represents that the contribution was in the best interests of the Plan;

(b) The Master Lease and the Properties are financially sound, income producing assets;

(c) The fair market value of the Properties and Master Lease has been determined by an independent appraisal;

(d) The contribution is larger than would have been made by the Employer if the contribution were made in cash;

(e) The contribution is a one time transaction; and

(f) The Employer guarantees that it will reimburse the Plan for any loss should the Plan dispose of the Properties or Master Lease and will guarantee that the Plan will receive at least $575,000 effective annual gross income from the Master Lease.

Notice to Interested Persons

Within 10 days after the notice of pendency is published in the **Federal Register**, notice will be provided to Plan participants by first class mail and by posting on the bulletin boards at the various places of employment of the Employer. Notice will include a copy of the notice of pendency as published in the **Federal Register** as well as a statement informing interested persons of their right to comment and request a public hearing within the period of time specified in the notice of pendency.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or

statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the contribution on April 30, 1980 of the Master Lease and Properties by the Employer to the Plan, provided that: (1) The Employer's federal tax deduction for the contribution of the Master Lease and the Properties was not greater than their fair market values on the date of contribution; and (2) the contribution of the Master Lease and Properties was valued at their fair market values by the Plan on the date of contribution.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of July 1981.

Ian D. Lanoff,

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

[FR Doc. 81-21746 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-57; Exemption Application No. D-2199 and D-2200]

Exemption From the Prohibitions for Certain Transactions Involving the Gordon Food Service, Inc., Pension Plan and Trust and the Gordon Food Service, Inc., Profit Sharing Plan and Trust Located in Grand Rapids, Michigan.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This temporary exemption permits (1) for a period of 5 years the proposed loans of money (the Loans) by the Gordon Food Service, Inc. Pension Plan and Trust (the Pension Plan) and the Gordon Food Service, Inc. Profit Sharing Plan and Trust (the Profit Sharing Plan), collectively (the Plans) to Gordon Food Service, Inc. (the Employer), the sponsor of the Plan; and (2) for the term of the Loans the personal guarantees of Paul B. Gordon and John M. Gordon of the obligation of the Employer in such Loans.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216 (202) 523-8881. (This in not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 15, 1981, notice was published in the **Federal Register** (46 FR 26952) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for a period of five years for (1) the Loans by the Plans to the Employer; and (2) for the term of the Loans the personal guarantees in the Loans by Paul B. Gordon and John M. Gordon. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicants have represented that they have satisfied the notice to interested persons as required in the notice of pendency. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in

ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply (1) for a period of 5 years to the Loans by the Plans to the Employer provided that the terms and conditions of the Loans are at least as favorable as those which the Plans would receive from an unrelated party in similar transactions; and (2) for the term of the Loans to the personal guarantees of Paul B. Gordon and John M. Gordon of the obligation of the Employer in the Loans.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 17th day of July 1981.

Ian D. Lanoff,

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

[FR Doc. 81-21598 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-58; Exemption Application Nos. D-2414 and D-2415]

Exemption From the Prohibitions for Certain Transactions Involving the Hancock Manufacturing Co., Inc., Salaried Employees Retirement Plan and the Hancock Manufacturing Co., Inc., Pension Plan Covering Employees in Local No. 3703, U.S.W. Located in Toronto, Ohio

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits (1) a loan of $160,000 and a loan of $340,000 (the Loans) from, respectively, the Hancock Manufacturing Co., Inc. Salaried Employees Retirement Plan and the Hancock Manufacturing Co., Inc. Pension Plan Covering Employees in Local No. 3703, U.S.W. (collectively, the Plans) to the Hancock Manufacturing Co., Inc. (the Employer), a party in interest with respect to the Plans; and (2) the personal guarantee of the Employer's obligations pursuant to each Loan by certain parties in interest with respect to the Plans.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 12, 1981, notice was published in the **Federal Register** (46 FR 26405) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the above-described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was distributed to interested persons as required in the notice of pendency. No requests for a hearing were received by the Department.

One public comment was received in which the commentator requested information with respect to certain aspects of the proposed exemption. The Department contacted the commentator and provided such requested information. The commentator then stated that he had no objection to the granting of the exemption. After consideration of the entire record, including the comment, the Department has determined to grant the exemption.

The applicant represented in the notice, at 46 FR 26405, that the Employer will warrant to own throughout the terms of the Loans all collateral (consisting of the Employer's raw material inventory) free from any adverse claims, encumbrances or security interests other than the security interests granted to the Plans. However, the applicant's representative has recently notified the Department that BancOhio, a lender to the Employer, intends to maintain a perfected second security interest in the collateral. The applicant thereby proposes to amend the applicable agreements to provide that the Employer will warrant, throughout the terms of the Loans, to own all of the collateral free from any adverse claims, encumbrances or security interests except for the security interests granted to the Plans and the security interest subordinate to the Plan granted to BancOhio.

The applicant's representative has notified the Harter Bank and Trust Company (the Bank), the independent fiduciary with respect to the proposed transactions, of BancOhio's second lien. The Bank has represented that BancOhio's security interest, being subordinate to the Plan's security interest, will not adversely affect the Plan's security position. The Department notes this proposal change and has determined that such does not reflect on the merits of the exemption. The Department hereby incorporates such change into this final grant.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an

exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisioins of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule in not dispositive of whether the transaction is, in fact, a prohibitied transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the Loans by the Plans to the Employer as described in the notice of pendency provided that the terms and conditions of the Loans are not less favorable to the Plans than those obtainable in similar transactions with an unrelated third party and (2) the personal guarantee of the Employer's obligations pursuant to the Loans by Messrs. David L. Brennan, Richard M. Hamlin and James F. McCready, parties in interest with respect to the Plans.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be comsummated pursuant to this exemption.

Signed at Washington, D.C., this 17th day of July 1981.

Ian D. Lanoff,

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

[FR Doc. 81-21599 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

American Handling Equipment, Inc., et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 3, 1981.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 3, 1981.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 13th day of July 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Handling Equipment, Inc. (workers)	Campbell, Hall, N.Y.	7/6/81	6/29/81	TA-W-12,825	Forklifts, sales, rentals, repairs.
Compo Industries, Inc., IVC Mold Div. (company)	Waltham, Mass.	6/30/81	6/29/81	TA-W-12,826	Aluminum shoe molds.
Cheboygan Manufacturing (workers)	Cheboygan, Michigan	7/1/81	6/27/81	TA-W-12,827	Radiator tubes.
Everlock Tennessee (workers)	Portland, Tenn.	7/6/81	6/29/81	TA-W-12,828	Fasteners for the auto industry.
Gulf Oil Company, Toledo Refinery (OCAWIU)	Toledo, Ohio	7/6/81	6/29/81	TA-W-12,829	Petroleum products.
J & W Cedar Products (workers)	Ridgefield, Washington	6/17/81	6/10/81	TA-W-12,830	Red cedar shingles and shakes.
Maroshel Mills, Inc. (workers)	New York, New York	7/6/81	6/15/81	TA-W-12,831	Woven fabrics.
North Hoquiam Cedar Products, Inc. (workers)	Hoquiam, Washington	7/6/81	7/1/81	TA-W-12,832	Red cedar shakes and shingles.
Phoenix Manufacturing Company (workers)	Roselle, N.J.	7/7/81	7/2/81	TA-W-12,833	Men's and boys' cloth outerwear.
Scott & Williams (USWA)	Laconia, N.H.	7/6/81	6/29/81	TA-W-12,834	Circular fabrics and hosiery knitting machines.
Jim Kraut Chevrolet (workers)	Butte, Montana	6/30/81	6/8/81	TA-W-12,835	Car dealership.
M. Snower & Co. (ACTWU)	Cairo, Illinois	7/10/81	7/2/81	TA-W-12,836	Lab frocks, waiter jackets, jeans, coveralls.
National Steel Corp., Great Lakes Steel Div. (USWA).	Ecorse, Michigan	7/8/81	6/26/81	TA-W-12,837	Hot and cold rolled sheet and plate.
Press Formed Products, Inc. (workers)	Centerline, Michigan	7/8/81	7/1/81	TA-W-12,838	Oil slinger, plate and damper assembly.
RCA, Consumer Electronics Div. (IBEW)	Indianapolis, Indiana	7/6/81	6/29/81	TA-W-12,839	Speakers and field neutralization coils.
Sharon Steel Corp., Bayered Operations (USWA)	Hanover, N.M.	7/6/81	7/1/81	TA-W-12,840	Copper mine and mill.
Young House Designs (workers)	New York, New York	7/6/81	7/1/81	TA-W-12,841	Ladies' garments.

[FR Doc. 81-21700 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,356]

Metal Products Co., Niles, Ohio; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated on August 25, 1980 in response to a petition which was filed on behalf of workers at The Metal Products Company, Niles, Ohio. Workers at the firm produce primarily stamped steel flanges for automotive use.

Preliminary estimates indicate that U.S. aggregate imports of stamped steel flanges increased absolutely and relative to domestic production from 1979 to 1980. Preliminary estimates indicate that U.S. imports of stamped steel flanges decreased absolutely and relative to domestic production from 1978 to 1979.

The Department surveyed the major customers of The Metal Products Company for their purchases of stamped steel flanges. Customers representing a substantial proportion of sales and the sales decline at The Metal Products Company during 1980 reported decreasing purchases from The Metal Products Company and increasing purchases of imported stamped steel flanges.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the stamped steel flanges produced at The Metal Products Company, Niles, Ohio contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of The Metal Products Company, Niles, Ohio who became totally or partially separated from employment on or after January 1, 1980 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 13th day of July 1981.

Bert Lewis,

Administrator, Unemployment Insurance Service.

[FR Doc. 81-21709 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-11,188]

Redwood City Knitting Mills, Inc., Redwood City, California; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the department of labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated on October 6, 1980 in response to a petition which was filed on behalf of workers at Redwood City Knitting Mills, Incorporated, Redwood City, California. The workers produced ladies' large-sized knit sweaters.

U.S. imports of women's, misses' and children's sweaters increased absolutely in 1980 compared to 1979.

The Department of Labor conducted a survey of major customers of Redwood City Knitting Mills, Incorporated as well as a sample of randomly selected customers. The survey revealed that the respondents, in aggregate, decreased their purchases of sweaters from Redwood City Knitting Mills in 1980 compared to 1979 and increased their purchases of imported sweaters on both an absolute basis and relative to total purchases in 1980 compared to 1979 and in 1979 compared to 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' large-sized knit sweaters produced at Redwood City Knitting Mills, Incorporated, Redwood City, California contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of Redwood City Knitting Mills, Incorporated, Redwod City, California who became totally or partially separated from employment on or after September 6, 1979 and on or before January 31, 1981 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 13th day of July 1981.

Bert Lewis,

Administrator, Unemployment Insurance Service.

[FR Doc. 81-21710 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-28-M

Wage and Hour Division

Certificates Authorizing the Employment of Learners at Special Minimum Wages

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and Administrative Order No. 1–76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. For each certificate, the effective and expiration dates, number or proportion of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

The following certificates were issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9), as amended and 522.25, as amended. Each of the following normal labor turnover certificates authorize 10 learners.

College Casuals Co., Sheppton, PA; 04–23–81 to 04–22–82. (Ladies' slacks)

Flushing Shirt Mfg. Co., Inc. Waynesburg, PA; 04–18–81 to 04–17–82. (Work shirts)

Each learner certificate has been issued upon the representations of the employer which, among other things were that employment of learners at special minimum rates it necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available.

The certificate may not be annulled or withdrawn as indicated therein, in the manner provided in 29 CFR, part 528. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof on or before August 10, 1981.

Signed at Washington, D.C., this 20th day of July 1981.

Arthur H. Korn

Authorized Representative of the Administrator.

[FR Doc. 81-21715 Filed 7-23-81; 8:45 am]

BILLING CODE 4510-27-M

MERIT SYSTEMS PROTECTION BOARD

Call for Riders for DIGEST

AGENCY: Merit Systems Protection Board.

ACTION: Notice of call for riders for DIGEST for fiscal year 1982.

SUMMARY: The purpose of this notice is to inform Federal agencies that the Merit Systems Protection Board publication, entitled DIGEST, will be available for fiscal year 1982 on riders to the Government Printing Office. Departments and agencies may order this monthly publication by riding the Merit Systems Protection Board's printing requisition #82-41. Agency *FY 82 requisitions (Standard Form 1)* should be submitted to the Government Printing Office, Requisitions Section, Room 836, Washington, D.C. 20401 no later than September 1, 1981, *through the Washington, D.C. headquarters* office authorized to procure printing for the agency. Agencies may estimate cost by using the current Government Printing Office price list of printing services.

FOR FURTHER INFORMATION CONTACT: Elizabeth Principe, Publications Division, Office of the Secretary, Merit Systems Protection Board, Room 220, 1717 H Street, NW., Washington, D.C. 20419, 202/653-7130.

Merit Systems Protection Board.

Ersa H. Poston,

Vice Chair.

July 16, 1981.

[FR Doc. 81-21426 Filed 7-23-81; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL ENDOWMENT ON THE ARTS AND THE HUMANITIES

Inter Arts Panel (Folk Arts Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Folk Arts Section of the Inter Arts Advisory Panel to the National Council on the Arts will be held on August 13-14, 1981, from 8:30 a.m.-5:30 p.m. in Room 1340 of the Columbia Plaza office complex, 2401 E Street, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public on August 14, 1981 from 8:30 a.m.-5:30 p.m. for a discussion of policy.

The remaining sessions of this meeting on August 13, 1981, from 8:30 a.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisor, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

July 20, 1981.

[FR Doc. 81-21693 Filed 7-23-81; 8:45 am]

BILLING CODE 7537-01-M

Music Panel (Opera-Musical Theatre Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Opera-Musical Theatre Section of the Music Advisory Panel to the National Council on the Arts will be held on August 19-21, 1981 from 9:00 a.m.-6:00 p.m., in the Columbia Plaza Office Complex, Room 1426, 2401 E Street, N.W., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

July 20, 1981.

[FR Doc. 81-21692 Filed 7-20-81; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Panel (Art in Public Places Section); Meeting

Pursuant to Section 10 (a) (2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Art in Public Places Section) to the National Council on the Arts will be held on August 12-13, 1981 from 9:30 a.m.-5:30 p.m., in Room 1426 on August 12, and Room 1422 on August 13, of the Columbia Plaza office complex, 2401 E Street, N.W., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, descussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

July 20, 1981.

[FR Doc. 81-21691 Filed 7-23-81; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[DCA 81-AR-045]

Accident Investigation; Hearing

In connection with its investigation of the July 3, 1981, accident involving New York City Transit Authority subway trains 142NL and 132NL, the Safety Board will convene a hearing on August 4, 1981, at 9 a.m. in the Emmanuel Cellers Building, 225 Cadman Plaza East, Brooklyn, N.Y.

Margaret L. Fisher,

Federal Register Liaison Officer.

July 20, 1981.

[FR Doc. 81-21666 Filed 7-23-81; 8:45 am]

BILLING CODE 4910-58-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

Metropolitan Edison Co., et al.; Granting of Relief From Requirements for Updating Final Safety Analysis Report

The U.S. Nuclear Regulatory Commission (the Commission) has granted an exemption from certain requirements of 10 CFR Part 50.71(e) to Metropolitan Edison Company, Jersey Central Power and Light Company, and Pennsylvania Electric Company. The exemption relates to the requirement for periodically undating the Final Safety Analysis Report (FSAR) for Three Mile Island Nuclear Station, Unit 2, located in Dauphin County, Pennsylvania. The exemption is effective as of its date of issuance.

The exemption deletes the requirement to periodically update the TMI-2 FSAR to reflect facility changes made during the cleanup of TMI-2 and provides for the use of System Descriptions (SDs) and Technical Evaluation Reports (TERs) for documenting these changes and associated safety evaluations. The exemption also requires that any changes to the facility described in the SDs and TERs, changes to the procedures described in the SDs and TERs, and conduct of tests or experiments not described in the SDs and TERs shall be subject to the provisions of 10 CFR Section 50.59.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the letter granting relief.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the request for relief dated May 6, 1981, (2) the Commission's letter to the licensee dated July 20, 1981, and (3) the Commission's related Safety Evaluation.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20555 and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonweatlh and Walnut Streets, Harrisburg, Pennsylvania 17126. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, TMI Program Office.

Dated at Bethesda, Maryland this 20th day of July 1981.

For the Nuclear Regulatory Commission.

Bernard J. Snyder,

Program Director, Three Mile Island Program Office, Office of Nuclear Reactor Regulation.

[FR Doc. 81-21775 Filed 7-23-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-311]

Public Service Electric and Gas Co. et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 1 to Facility Operating License No. DPR-75, issued to Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees), which revised License No. DPR-75 of the Salem Nuclear Generating Station, Unit No. 2 (the facility) located in Salem County, New Jersey. The amendment is effective as of the date of issuance.

The amendment approves a two week extension in the schedule for completion of specified fire protection measures.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this admendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated July 10, 1981, (2) Amendment No. 1 to License No. DPR-75, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. for inspection and copying for a fee and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey.

Dated at Bethesda, Maryland, this 20th day of July 1981.

For the Nuclear Regulatory Commission.

Harry Rood,

Acting Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 81-21774 Filed 7-23-81; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

Privacy Act of 1974; System of Records; Annual Publication

In accordance with section 552a(e)(4) of the Privacy Act of 1974 the Postal Rate Commission hereby publishes notice of the existence of its System of Records. The System of Records was last published in full text in the **Federal Register** on September 22, 1977 (42 FR 48228). No changes have occurred since the last full text publication and the System of Records remains in effect as previously published.

David F. Harris,

Secretary.

[FR Doc. 81-21695 Filed 7-23-81; 8:45 am]

BILLING CODE 7715-01-M

POSTAL SERVICE

Proposed Telecommunications Arrangements for U.S. Postal Service Electronic Computer Originated Mail (E-COM) Service; Extension of Time for Filing Comments

AGENCY: Postal Service

ACTION: Proposed telecommunications arrangements for E–COM service; extension of time for filing comments.

SUMMARY: The Postal Service hereby extends the time for filing comments on the Postal Service's proposed arrangements for telecommunications common carriers to connect with E–COM serving post offices. This extension was requested by GTE Telenet.

DATE: Comments are now due on or before 10 a.m., August 3, 1981.

ADDRESS: Director, Office of Electronic Mail Systems Development, 11711 Parklawn Drive, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Charles S. Shaw, (301) 443–6255.

SUPPLEMENTARY INFORMATION: On June 19, 1981, the Postal Service published in the **Federal Register**, 46 FR 32111, information concerning proposed arrangements for telecommunications common carriers to connect with E–COM serving post offices. At the same time, the Postal Service requested comments on the proposed arrangements and announced a meeting on June 29, 1981, to accept oral comments and to answer questions concerning the proposal. Written comments were due July 23, 1981.

On July 17, 1981, GTE Telenet requested the Postal Service to extend the time for filing comments two weeks. Telenet stated that it had not had sufficient time to prepare comments and that it had extensive comments to make. Since the Postal Service wants to assure that all carriers have an equal opportunity to connect with E–COM facilities and wants to avoid as far as possible any technical barriers to such connection, it has decided to grant an extension.

Therefore, the Postal Service hereby extends the time for filing comments on its proposal to 10 a.m., August 3, 1981.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 81–21701 Filed 7–23–81; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–17954; File No. SR–BSE–81–7]

Boston Stock Exchange, Inc.; Proposed Rule Change for Self-Regulatory Organizations

Relating to the establishment of a full-time Chairman, a Hearing Committee and a newly defined Business Conduct Committee.

Comments requested on or before August 14, 1981.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 1, 1981, the Boston Stock Exchange, Inc., filed with the Securities and Exchange Commission the proposed change as described in Item, I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publising this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Board of Governors of the Exchange unanimously approved resolutions calling for changes in the organizational structure of the Exchange, and has adopted amendments to the Constitution to implement these changes. These amendments would give the title of Chairman to the Chief Executive Officer of the Exchange, make the Chairman's office a full-time, paid position and make corresponding changes in the definition and responsibilities of the Vice Chairman and President. The paid Chairman of the Board would be selected by the Board of Governors and serve at the pleasure of the Board. He would be a member of the Board of Governors and would preside over meetings of the Board and of the Exchange.

The Chairman with the Vice Chairman and subject to the approval of the Board would appoint members of and fill vacancies on all committees of the Exchange except the Nominating Committee. The President would be the Chief Operating Officer of the Exchange and a member of the Board of Governors and an ex officio member of all committees except the Nominating Committee.

At the same time, the Board adopted amendments to Articles IX and XVI of the Constitution dealing with the Committees of the Exchange and the imposition of sanctions, which amendments create for the first time a Hearing Committee to conduct hearings in disciplinary proceedings brought by the Exchange and redefine the scope of jurisdiction of the Commission on Business Conduct. An appeal from a decision of either the Hearing Committee or the Committee on Business Conduct shall be to the Board of Governors, whose decision shall not be subject to review except by the Securities and Exchange Commission.

The Hearing Committee will conduct hearings on disciplinary proceedings which have been authorized by the Committee on Business Conduct for alleged violations of Federal or Exchange rules or stated policies. The amendment clarifies that only the Board can impose the sanctions of suspension or expulsion after hearing and recommendation of the Hearing Committee.

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

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) These amendments recognize the need for continuity of executive leadership to guide the Exchange as it moves into the national market system environment. It has become increasingly apparent in the past few years that the demands of administering the Exchange, negotiating with the regulatory bodies and providing testimony to the Securities and Exchange Commission and Congressional Committees, as well as leading the Exchange's transition to national market system trading require the continuity of a full time Chairman. In addition, the operations of a clearing corporation, a depository and increasing complexity of data processing in all areas of the Exchange's operations require full-time efforts in leadership and communication with membership. Similar conclusions have been reached by the other national exchanges which have responded by adopting structures similar to that proposed for the Exchange.

In addition, the changes call for the creation of a Hearing Committee to conduct hearings in disciplinary proceedings brought by the Exchange, and redefine the scope of jurisdiction of the Business Conduct Committee. These changes centralize the hearing and disciplinary functions in a committee created for that purpose, while clearly establishing responsibility for initiating the disciplinary process. Other national exchanges have structured their disciplinary procedures in a similar manner.

(b) The constitutional amendments are consistent with Section 6(b)(1) of the Act since they related to the organization of the Exchange and its capacity to be able to carry out the purposes of the Securities Exchange Act of 1934 as amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Boston Stock Exchange, Inc., does not believe the amendments impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments have been solicited or received from members or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed change that are filed with the Commission, and all written communications relating to the proposed change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before August 14, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 20, 1981.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-21888 Filed 7-23-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17953; file No. SR-NYSE-81-13]

New York Stock Exchange, Inc.; Proposed Rule Change for Self-Regulatory Organizations Relating to Exemption From Floor Trading Rules for Risk Arbitrage and Bona Fide Hedge Transactions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1), notice is hereby given that on July 2, 1981, the New York Stock Exchange, Inc. Filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. Comments requested on or before August 14, 1981.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange Rules 108, 109, 111, and 112, which regulate members' trading on the Floor of the Exchange, to broaden the existing exception in those rules for "bona fide arbitrage" to include "risk arbitrage" and "bona fide hedge" transactions as well. The proposed rule change also consists of a stated policy the Exchange proposes to adopt interpreting the meaning of the terms "bona fide arbitrage", "risk arbitrage", and "bona fide hedge" in accordance with the Commission's discussion of these terms in SEC Release 34-15531 (Jan. 26, 1979).

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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

The Exchange is proposing to amend Rules 108, 109, 111, and 112, which contain restrictions on members' on-Floor trading for their own accounts. An amendment to Rule 112.10(b) would also apply to transactions for the proprietary account of a member organization which are initiated from off the Floor. At present, these rules contain an exemption from the restrictions listed therein for "bona fide arbitrage." The Exchange's proposed rule change would broaden this exemption to include "risk arbitrage" and "bona fide hedge" transactions as well.

Statutory Basis for the Proposed Rule Change

The principal statutory basis for the existing restrictions on member's proprietary trading on the Floor of the Exchange is Section 11(a) of the Act. This section was intended to minimize the alleged time/place advantage that Floor professionals would otherwise have over the off-Floor orders of public customers.

As originally adopted, Section 11(a) authorized the SEC to regulate or prevent Floor trading by exchange members and specifically stated that SEC rules in this area "may make . . . exemption for arbitrage transactions . . ."

Based on the authority in Section 11(a) of the Act, the SEC adopted Rule 11a-1 in 1964. Rule 11a-1 prohibits a member, while on the Floor, from initiating any transaction for an account in which the member has an interest. Among the exemptions to this prohibition, however, are the following:

- Any bona fide arbitrage transaction [this exemption relates directly to the exemption in Section 11(a) of the Act]
- Any transaction effected in conformity with a plan designed to eliminate Floor trading activities which are not beneficial to the market and which plan is adopted by an exchange and declared effective by the SEC.

Exchange Rules 108, 109, 111, and 112 comprise part of the "plan" called for in SEC Rule 11a-1(b)(7), and, as in SEC Rule 11a-1 and Section 11(a) of the Act, these rules were developed with an exception for bona fide arbitrage transactions.

The most significant restrictions in the Exchange's Floor trading rules are the requirement that members' on-Floor proprietary orders yield priority, parity and precedence based on size (Rules 108

and 112) and the requirement that members' on-Floor proprietary trading meet certain stabilization tests (Rule 112). The requirements stated in the Exchange's Floor trading rules represent a compromise aimed at (i) curbing the time/place advantage that members allegedly enjoyed over the public when dealing on the Floor for their own account and (ii) ensuring that members' proprietary dealings have a positive effect on the market.

Rule 112.20(b) was designed to prevent members from circumventing the Floor trading rules by leaving the Floor and entering orders that would otherwise be prohibited. The Rule was also intended to prevent member organizations from utilizing Floor information that would give them an advantage over the public when entering orders for their own accounts from off the Floor.

It should be noted that prior to the 1975 Amendments, Section 11(a) merely delegated to the Commission the authority to prescribe rules and regulations regarding members' on-Floor trading. However, the 1975 Amendments substantially changed the emphasis of Section 11(a). Section 11(a)(1) now flatly prohibits a member of any national securities exchange from effecting a proprietary trade on such exchange, with certain specified exemptions.

One of the most significant exemptions is contained in subparagraph (D), which provides that the following transactions shall not be unlawful:

> any bona fide arbitrage transaction, any bona fide hedge transaction involving a long or short position in any equity security and a long or short position in a security entitling the holder to acquire or sell such equity security, or any risk arbitrage transaction in connection with a merger, acquisition, tender offer, or similar transaction involving a recapitalization.

In effect, Congress moved away from its former passive delegation of authority to the Commission and took the affirmative position that bona fide arbitrage, risk arbitrage, and bona fide hedge transactions should be exempt from prohibitions against members' proprietary on-Floor trading. Apparently Congress believed that such transactions would have a positive effect on the nation's securities markets and would not be harmful to public investors. Thus, it can be said that the statutory basis for the Exchange's proposed rule change is Section 11(a)(1)(D) of the Act. Section 6(b)(5) and Section 11A(a)(1)(C) of the Act provide an additional statutory basis for the proposed rule change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate to further the purposes of the Act. In fact, by enhancing the ability of Floor professionals to engage in risk arbitrage and bona fide hedge transactions, the proposed rule change should enhance competition by permitting members of the Floor to engage in activities for their own account on an equal footing with off-Floor professionals, who are not subject to on-Floor trading restrictions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 1100 "L" Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the abovementioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before August 14, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 17, 1981.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-21689 Filed 7-23-81; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2002]

California; Declaration of Disaster Loan Area

The area of Napa County, California constitutes a disaster area because of damage resulting from a fire which occurred on June 22–25, 1981. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on September 14, 1981, and for economic injury until the close of business on April 15, 1982, at: Small Business Administration, District Office, 211 Main Street, 4th Floor, San Francisco, California 94105 or other locally announced locations. For recent changes in disaster loan eligibility see 46 FR 18526 (March 25, 1981).

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 15, 1981.

Michael Cardenas,

Administrator.

[FR Doc. 81-21649 Filed 7-23-81; 8:45 am]

BILLING CODE 8025-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 142
Friday, July 24, 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

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:30 a.m., Friday, July 24, 1981.

PLACE: 2033 K Street, N.W., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matter—Litigation.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1129-81 Filed 7-22-81; 10:25 am]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 46, No. 140, Wednesday, July 22, 1981, page 37844.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 am. Tuesday, July 28, 1981.

CHANGES IN THE MEETING: Deletion—Section 5(12) Consideration of Financial Protection Rules.

[S-1133-81 Filed 7-22-81; 12:23 pm]

BILLING CODE 6351-01-M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

DATE AND TIME: 9:30 am (Eastern Time), Tuesday, July 28, 1981.

PLACE: Commission Conference Room, No. 5240 on the fifth floor of the Columbia Plaza Office Buiding, 2401 E Street NW, Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Freedom of Information Act Appeal No. 81-6-FOIA-9-BA, concerning a request for copies of all documents in the open case file compiled on requestor's charge of discrimination.
2. Freedom of Information Act Appeal No. 81-4-FOIA-11-DE, concerning all documents in an open age discrimination charge file.
3. Freedom of Information Act Appeal No. 81-4-FOIA-026-NY, concerning a request for copies of information in three Title VII charge files.
4. Freedom of Information Act Request Appeals Nos. 81-4-FOIA-11-mm and 81-4-FOIA-128, concerning a request for all documents concerning a Commissioner's charge.
5. Final Interpretations of Age Discrimination in Employment Act (Part 1625).
6. Filing and Deferral of Title VII Charges: Final 1601.13 Regulations.
7. Report on Commission operations by the Executive Director.

Closed to the public

Limitation Authorization: General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Treva I. McCall, Executive Officer, Executive Secretariat, at (202) 634-6748.

This notice issued July 21, 1981.

[S-1132-81 Filed 7-22-81; 12:01 pm]

BILLING CODE 6570-06-M

4

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10 a.m., Thursday, July 30, 1981.

PLACE: 1700 G Street, N.W., Board Room, 6th Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6679).

MATTERS TO BE CONSIDERED:

Request for Regulatory Waiver of Subparagraph (b)(5) of Insurance Regulation 563.8-1—Midwest Federal Savings and Loan Association Minneapolis, Minn.

Trust Department Application—Marianna Federal Savings and Loan Association (Mutual), Marianna, Ark.

Trust Department Powers—Suburban Federal Savings and Loan Association, Cincinnati, Ohio.

Merger: Increase of Accounts of an Insurable Type—Charlottesville Savings and Loan Association (Stock), Charlottesville, Virginia INTO Jefferson Savings and Loan Association (Stock), Warrenton, Va.

Conversion to Federal Charter, Merger, Retention of Facilities, and Change of Office Location—Naperville Federal Savings and Loan Association (Mutual), Naperville, Illinois AND Geneva Savings and Loan Association (Mutual), Geneva, Illinois INTO DeKalb Savings and Loan Association (Mutual), DeKalb, Ill.

Federal Usury Preemption.

No. 518, July 22, 1981.

[S-1130-81 Filed 7-22-81; 11:29 am]

BILLING CODE 6720-01-M

5

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9 a.m., July 30, 1981.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Agreement No. 9925-3: Ten-year extension of Pacific America Container Express Cooperative Working Arrangement.
2. Agreement No. 10118-5: Atlantic Steamship Energy Conservation Agreement—Consideration of draft order of conditional approval.
3. Docket No. 81-3: Exemption of joint policing agreements from the filing and approval requirements of section 15 of the Shipping Act, 1916—Consideration of comments submitted in response to notice of proposed rulemaking.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523-5725.

[S-1131-81 Filed 7-22-81; 11:29 am]

BILLING CODE 6730-01-M

6

FEDERAL RESERVE SYSTEM. Board of Governors.

TIME AND DATE: Approximately 11:30 a.m., Wednesday, July 29, 1981, following a recess at the conclusion of the open meeting.

PLACE: 20th Street and Constitution Avenue, N.W., 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: July 21, 1981.

James McAfee,

Assistant Secretary of the Board.

[S–1127–81 Filed 7–22–81; 9:41 am]

BILLING CODE 6210–01–M

7

FEDERAL RESERVE SYSTEM: Board of Governors.

TIME AND DATE: 10 a.m., Wednesday, July 29, 1981.

PLACE: Board Building, C Street entrance between 20th and 21st Streets, N.W. Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposal to amend Regulation K (International Banking Operations) to include subordinated debt as capital in Edge and Agreement corporations.

2. Proposed amendment to Regulation K (International Banking Operations) to extend certain supervisory and reporting requirements to fiduciary activities.

Discussion Agenda

3. Proposed revision of Regulation C (Home Mortgage Disclosure) to implement the Home Mortgage Disclosure Act amendments of 1980 (Proposed earlier for public comment; Docket No. R–0350)

4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452–3204.

Dated: July 21, 1981.

James McAfee,

Assistant Secretary of the Board.

[S–1128–81 Filed 7–22–81 9:41 am]

BILLING CODE 6210–01–M

8

NATIONAL MEDIATION BOARD.

TIME AND DATE: 2 P.M., Wednesday, August 5, 1981.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Ratification of Board actions taken by notation voting during the month of July, 1981.

(2) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMANTION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, Tel: (202) 523–5920.

DATE OF NOTICE: July 21, 1981.

[S–7560–01 Filed 7–22–81; 11:00 am]

BILLING CODE 7560–01–M

federal register

Friday
July 24, 1981

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

None

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Arizona: AZ81–5124	May 29, 1981.
Colorado: CO80–5140	Oct. 24, 1980.
Connecticut:	
CT81–3001	Jan. 23, 1981.
CT81–3032	May 15, 1981.
Hawaii: HI81–5106	Mar. 6, 1981.
Idaho: ID61–5125	June 5, 1981.
Louisiana:	
LA81–4024	May 1, 1981.
LA81–4027	May 1, 1981.
Nevada:	
NV81–5102	Feb. 6, 1981.
NV81–5103	Feb. 6, 1981.
NV81–5104	Feb. 20, 1981.
NV81–5111	May 1, 1981.
New York:	
NY81–3003	Jan. 23, 1981.
NY81–3039	June 12, 1981.
North Dakota: ND81–5131	July 6, 1981.
Oklahoma: OK81–4051	July 10, 1981.
Pennsylvania:	
PA80–3031	Aug. 29, 1980.
PA80–3043	July 17, 1980.
PA80–3044	July 25, 1980.
PA80–3055	Oct. 3, 1980.
Texas:	
TX81–4015	Apr. 3, 1981.
TX81–4016	Apr. 3, 1981.
TX81–4030	May 8, 1981.
TX81–4036	June 5, 1981.
TX81–4037	June 5, 1981.
TX81–4044	June 26, 1981.
TX81–4048	July 10, 1981.
Utah: UT81–5117	May 8, 1981.
Wyoming: WY81–5106	Apr. 3, 1981.

Supersedeas Decisons to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Alabama:	
AL81–1124 (AL81–1271)	Dec. 30, 1980.
AL81–1183 (AL81–1266)	Feb. 6, 1981.
Alaska: AK81–5110 (AK81–5136)	Apr. 10, 1981.
Arkansas: AR80–4020 (AR81–4060)	Mar. 14, 1980.
Minnesota: MN80–2036 (MN81–2042)	June 27, 1980.
Missouri:	
MO79–4081 (MO81–4062)	Sept. 7, 1979.
MO79–4093 (MO81–4057)	Nov. 23, 1979.
MO80–4093 (MO81–4058)	Nov. 28, 1980.
MO80–4095 (MO81–4069)	Dec. 12, 1980.

MO80-4096 (MO81-4063)..... Dec. 12, 1980.
MO81-4020 (MO81-4061)..... Mar. 27, 1981.
Tennessee:
TN80-1054 (TN81-1272)..... Feb. 8, 1980.
TN81-1261 (TN81-1272)..... July 6, 1981.

Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C., this 17th day of July 1981.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

Modification Page 1

DECISION NUMBER AZ81-5124 Mod. #4
(46 FR 29160 - May 29, 1981)

Statewide, Arizona	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Electricians					
Area 2					
Electricians; Technicians					
Cable Splicers					
Zone A	$16.00	.96	3%+.93		1/2%
Zone B	19.12	.96	3%+.93		1/2%

DECISION NO. CO80-5140 - Mod. #6 (45 FR 70691 - Oct. 24, 1980)					
Las Animas, Otero and Pueblo Counties, Colorado					
CHANGE:					
Soft Floor Layers	$13.14	.80	$1.30	$1.00	.13

Modification Page 2

DECISION NO. CT81-3001 - MOD. #4 (46 FR 7721 - January 23, 1981) Fairfield, Litchfield and Windham Counties, Connecticut	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
CARPENTERS, MILLWRIGHTS, PILEDRIVERMEN & SOFT FLOOR LAYERS BUILDING CONSTRUCTION:					
Fairfield Co. (Bethel, Brookfield, Danbury, Darien, Greenwich, New Canaan, New Fairfield, Newton, Norwalk, Redding, Ridgefield, Sherman, Stamford & Wilton)					
Carpenters, Piledrivermen & Soft Floor Layers					
Building	12.60	.90	.65		.10
Residential	11.80	.60	.65		.10
Millwrights	13.10	.90	.65		.10
Litchfield Co. (Barkhamsted, Bethlehem, Bridgewater, Canaan, Colebrook, Cornwall, Goshen, Kent, Litchfield, Morris, New Hartford, New Milford, Norfolk, North Canaan, Roxbury, Salisbury, Sharon, Torrington, Warren, Washington, Winchester, & Woodbury)					
Carpenter, Piledrivermen & Soft Floor Layers	12.35	.90	.65		.10
Millwrights	13.10	.90	.65		.10
Windham Co.					
Carpenters, Piledrivermen & Soft Floor Layers	12.90	.90	.65		.03
Millwrights	13.40	.90	.65		.03

Modification Page 3

DECISION NO. CT81-3001 - CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
Fairfield Co. (Norwalk - east of Five Mile River -, Weston, Westport)	13.24	1.18	3%+.65	6%	½%
Fairfield Co, (Bethel, Bridgeport, Brookfield, Danbury, Easton, Fairfield, Monroe, New Fairfield, Newton, Redding Ridgefield, Shelton, Sherman, Stratford, & Trumbull) Litchfield Co. (Bridgewater & New Milford	14.55	1.20	3%+1.25		½%
Fairfield Co. (Darien, Greenwich, New Canaan, Stamford, and that portion of Norwalk lying West of the five mile river)	15.79	6%+7.50 per day	9½%	10%	½%+.02
Litchfield Co. (Plymouth)	14.85	1.07	3%+.65		½%
Windham Co.	14.30	1.25	3%+2.60		½%
Litchfield Co. (Remainder of County)	12.80	1.22	3%+.60		1/8%
IRONWORKERS: Ornamental, Reinforcing, Structural, and Precast Concrete Erection	15.80	1.03	2.45	i	.10
LABORERS (BUILDING): Laborers, carpenter tenders, wrecking laborers	10.00	.65	.80		.10
Jack hammer operator, mason tenders, mortar mixer, pipe layers, plasterers tenders, power buggy operators, powdermen	10.25	.65	.80		.10

Modification Page 4

DECISION NO. CT81-3001 - CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air track operators, wagon drill operators, sand blasters, blasters	10.75	.65	.80		.10
Open air caisson, cylindrical work and boring crew:					
Bottom men	10.50	.65	.80		.10
Top men	10.00	.65	.80		.10
PAINTERS:					
Fairfield Co. (Bridgeport, Easton, Fairfield, Southport, Stratford, & Trumbull)					
Brush	11.05	.50	.65	k	
Bosun Chair, Swing Stage	11.80	.50	.65	k	
Spray, Epoxy	13.55	.50	.65	k	
Taper	11.55	.50	.65	k	
Sandblasting	13.05	.50	.65	k	
Fairfield Co. (Bethel, Brookfield, Newton, Redding, Ridgefield, Sandy Hook, & Sherman) Litchfield Co. (New Milford)					
Brush	14.60	.50	1.00	k	
Steel	16.40	.50	1.00	k	
Tapers	14.60	.50	1.00	k	
Epoxy	17.50	.50	1.00	k	
Residential	12.85	.50	1.00	k	
Spray	21.90	.50	1.00	k	
Vinyl & all wall covering	16.00	.50	1.00	k	
Windham Co. (Willimantic & Windham) Litchfield Co. (Remainder of County)					
Brush Tapers	12.15	1.20	1.10		.03
Paperhangers	12.65	1.20	1.10		.03
Riding Steel, Steam-cleaning, Sandblasting, Tanks, Towers, & Hazardous Work	12.73	1.20	1.10		.03
Spary	15.15	1.20	1.10		.03

Modification Page 5

DECISION NO. CT81-3001 - CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Windham Co. (Remainder of County)					
Brush	12.95	.80	.90		.01
Paperhangers, Sign, Taping	13.91	.80	.90		.01
Roller	13.46	.80	.90		.01
Structural Steel, Swing Stage	13.76	.80	.90		.01
Spraying Oil Plant	16.11	.80	.90		.01
Spraying Epoxy	18.64	.80	.90		.01
PLUMBERS:					
Fairfield Co. (Greenwich)	12.95	1.00	.80	8%	.07
Fairfield Co. (Darien, New Canaan & Stamford)	14.75	.75	.80	5%	.07
Litchfield Co. (Remainder of County)	13.35	.88	1.10		.05
ROOFERS:					
Fairfield Co., Litchfield Co. (Bethlehem, Bridgewater, Kent, New Milford, Roxbury, Washington, & Woodbury)	14.15	1.35	.45		
Litchfield Co. (Bantam, Canaan, Colebrook, Cornwall, Cornwall Bridge, E. Canaan, Falls Village, Gaylordsville, Goshen, Lakeside, Litchfield, Marbledale, Morris, New Hartford, New Preston, Norfolk, Northfield, Oakville, Prequabuck, Pine Meadow, Pleasant Valley, Plymouth, Riverton, Salisbury, Sharon, S. Kent, Taconic, Terryville, Thomaston, Torrington, Washington, Depot, Watertown, W. Cornwall, W. Goshen, Winchester Center, & Winsted), Windham Co.					

Modification Page 6

DECISION NO. CT81-3001 - CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Composition	12.05	.675	.95	.55	
Slate & Tile	12.55	.675	.95	.55	
STEAMFITTERS:					
Windham Co. (Windham)	14.08	1.16	2.00		.13
DECISION NO. CT81-3032 - Mod. #2 (46 FR 27040 - May 15,1981)					
Hartford, Middlesex, New Haven, New London and Tolland Counties, Connecticut					
CHANGE:					
Ironworkers	$15.80	1.03	2.45	j	.10

DECISION NUMBER HI81-5106 Mod. #5
(46 FR 15650 - March 6, 1981)

STATEWIDE, HAWAII	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Bricklayers; Stonemasons	$12.38	$1.30	$2.00	$ .70	$ .20
Cement Masons	12.33	1.30	2.00	.70	.20
Troweling Machine Operator	12.48	1.30	2.00	.70	.20
Marble Setter	12.38	1.30	2.00	.70	.20

DECISION NO. ID81-5125 - Mod. #3
(46 FR 30250-June 5, 1981)
Statewide, Idaho

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Electricians:					
Area 2:					
Electricians	$14.55	$1.00	3%+1.00		1%
Cable Splicers	15.94	1.00	3%+1.00		1%
Area 3:					
Electricians;					
Technicians	14.90	1.00	3%+1.00		1%
Cable Splicers	16.33	1.00	3%+1.00		1%
Power Equipment Operators:					
Area 2:					

Groups	ZONE 1	ZONE 2	ZONE 3
1	$12.16	$13.66	$13.91
2	12.32	13.82	14.07
3	12.69	14.19	14.44
4	13.00	14.50	14.75
5	13.17	14.67	14.92
6	13.35	14.85	15.10
7	13.71	15.21	15.46
8	13.94	15.44	15.69
9	14.17	15.67	15.92
10	14.41	15.91	16.15

FRINGE BENEFITS:

Health and Welfare	$ 1.28
Pensions	1.67
Apprenticeship Training	.10

DECISION NO. LA81-4024 - MOD. #5
(46 FR 24820 - May 1,1981)
Statewide Louisiana

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Cement masons:					
Zone 6	$ 9.35				
Elevator constructors:					
Zone 2:					
Mechanics	12.56	1.345	.95	a+b	.035
Helpers	70%JR	1.345	.95	a+b	.035
Helpers (Prob.)	50%JR				
Marble, tile & terrazzo workers & finishers:					
Zone 6:					
Marble, tile & terrazzo workers	15.00				

DECISION NO. LA81-4027 - MOD. #4
(46 FR 24834 - May 1,1981)
Bossier, Caddo & Calcasieu Parishes, Louisiana

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Elevator constructors:					
Bossier & Caddo Pars.:					
Mechanics	12.56	1.345	.95	a+b	.035
Helpers	70%JR	1.345	.95	a+b	.035
Helpers (prob.)	50%JR				

DECISION NO. NV81-5102 - Mod. #4
(46 FR 11482 - February 6, 1981)
Clark County (does not include the Nevada Test Site), Nevada

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters:					
Carpenters	$15.31	$1.05	$1.60		.10
Drywall Installer	15.48	1.05	1.60		.10
Floor Layers; Patent Scaffold Erectors; Power Saw Operators	15.46	1.05	1.60		.10
Lathers	15.48	1.05	1.60		.10
Millwrights	16.31	1.05	1.60		.10
Piledrivermen	15.51	1.05	1.60		.10
Electricians:					
Electricians; Technicians	18.36	.98	3%+2.55		.08
Cable Splicers	18.69	.98	3%+2.55		.08
Plaster Tenders	13.12	.81	1.58		.11
Truck Drivers:					
Group 1	12.78	.81	1.26		
Group 2	12.89	.81	1.26		
Group 3	12.94	.81	1.26		
Group 4	13.10	.81	1.26		
Group 5	13.28	.81	1.26		
Group 6	13.78	.81	1.26		

DECISION #NV81-5103 - Mod.#4
(46 FR 11486-February 6, 1981)
Nevada Test Site including Tonopah Test Range in Clark, Lincoln, and Nye Counties, Nevada

Change:					
Carpenters:					
Carpenters	16.41	1.05	1.60		.10
Floor Layers	16.435	1.05	1.60		.10
Millwrights	17.41	1.05	1.60		.10
Piledriver	16.61	1.05	1.60		.10
Power Saw Operator	16.56	1.05	1.60		.10
Ironworkers:					
Ornamental; Reinforcing; Structural	15.41	1.39	3.22	.40	.07

DECISION NO. NV81-5104 - Mod. #5
(46 FR 13482 - February 20, 1981)
Washoe County, Nevada

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Painters:					
Brush and Roller	$16.54	.84	.75		.02
Brush - swing stage, up to 40 ft.; Brush-steel	16.79	.84	.75		.02
Spray; Taper; Paperhangers; Sandblasters	17.04	.84	.75		.02
Spray - swing stage, up to 40 ft.; Spray-steel	17.29	.84	.75		.02
Plasterers	14.47	1.25	1.50		.05

DECISION #NV81-5111-Mod. #5
(46 FR 24837 - May 1, 1981)
Statewide (does not include the Nevada Test Site and Tonopah Test Range, and Highway Construction in Douglas County), Nevada

Change:					
Carpenters:					
Area 1:					
Carpenters	15.31	1.05	1.60		.10
Drywall Installer	15.48	1.05	1.60		.10
Floor Layers; Patent Scaffold Erectors; Power Saw Operators	15.46	1.05	1.60		.10
Lathers	15.48	1.05	1.60		.10
Millwrights	16.31	1.05	1.60		.10
Piledrivermen	15.51	1.05	1.60		.10
Electricians:					
Electricians; Technicians	18.36	.98	3%+2.55		.08
Cable Splicers	18.69	.98	3%+2.55		.08
Line Construction Workers:					
Area 1:					
Groundman	15.65	.98	3%		3/4%

DECISION NO. NV81-5111 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Line Equipment Operators	$18.78	.98	3%		3/4%
Linemen	20.87	.98	3%		3/4%
Cable Splicers	21.91	.98	3%		3/4%
Painters:					
Area 2:					
Brush and Roller	16.54	.84	.75		.02
Spray; Taper; Paperhangers; Sandblaster	17.04	.84	.75		.02
Spray - swing stage, up to 40 ft.; Spray-steel	17.29	.84	.75		.02
Brush - swing stage up to 40 ft.; Brush-steel	16.79	.84	.75		.02
Plaster Tenders:					
Area 1	14.30	.81	1.58		.11
Plasterers:					
Area 2	14.47	1.25	1.50		.05
Truck Drivers:					
Clark, Esmeralda, Lincoln, and Nye Counties:					
Group 1	12.78	.81	1.26		
Group 2	12.89	.81	1.26		
Group 3	12.94	.81	1.26		
Group 4	13.10	.81	1.26		
Group 5	13.28	.81	1.26		
Group 6	12.78	.81	1.26		

DECISION NO. NY81-3003 - Mod. #3
(46 FR 7737 - January 23, 1981)
Orange County, New York

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS, PILEDRIVERMEN & DOCK BUILDERS					
(Remainder of County)	11.60	1.15	1.15	1.00	.05
ELECTRICIANS					
Twps. of Otisville, Middletown, Goshen, Florida, Warwick, Port Jervis, Sparrow Bush, Monroe, Harman, Southfield, Tuxedo Lake and Tuxedo	12.50	8%	19%	10%	1%
ELEVATOR CONSTRUCTORS	13.21	1.195	.82	a+b	.035
ELEVATOR CONSTRUCTORS HELPER	9.91	1.195	.82	a+b	.035
ELEVATOR CONSTRUCTORS HELPER (PROBATIONARY)	6.605				
ELEVATOR CONSTRUCTORS MODERNIZATION & REPAIR	11.23	1.195	.82	a+b	.035
ELEVATOR CONSTRUCTORS MODERNIZATION & REPAIR HELPERS	8.42	1.195	.82	a+b	.035
ELEVATOR CONSTRUCTORS MODERNIZATION & REPAIR HELPERS (PROBATIONARY)	5.615				
MARBLE SETTERS, TERRAZZO WORKERS & TILE SETTERS					
West Newburgh, Little Britain, Rock Tavern, Lagrange, New Hampton, Ridgeburg & Johnson to County Line and all areas inclusive south thereof					
Marble Setters & Cutters	13.35	1.21	1.71	e	
Marble Carvers	13.50	1.21	1.71	e	
Marble Polishers	13.03	1.21	1.71	e	
Marble Setters Helper	11.35	1.21	1.71	e	
Tile Setters	12.675	1.15	1.10		
Tile Setters Helper	11.21	1.055	.77		
PAINTERS					
Commerical Spray, Sandblasting, Steel, Smoke Stacks, Bridges, Power Plants, Radio Towers, Epoxy & other toxic Materials	11.55	1.00	.65		
	12.55	1.00	.65		
PLUMBERS & STEAMFITTERS					
(Remainder of County)	13.35	1.35	2.15		.15

DECISION NO. NY81-3003 - Mod. #3 (CONT'D)

LINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electrical Overhead & Underground Distrubution Work					
Journeyman Lineman & Technician	12.00	1.40	3%+1.00	a	
Cable Splicer	16.00	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman-Dynamite Man	10.80	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Ground Truck Driver	9.60	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer)	10.20	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	9.00	1.40	3%+1.00	a	
All Overhead Transmission Line Work and Lighting for Athletic Fields					
Journeyman Lineman & Technician	13.80	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	12.42	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	11.04	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.73	1.40	3%+1.00	a	
Driver Mechanic, Groundman-Experienced	10.35	1.40	3%+1.00	a	
Sub-Station, Switching Structures (when not part of the line), Electrical, Telephone or CATV Commercial Work, Street Lighting & Signal Systems					
Journeyman Lineman & Technicians	14.55	1.40	3%+1.00	a	
Cable Splicer	16.005	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	13.095	1.40	3%+1.00	a	

DECISION NO. NY81-3003 - Mod.#3 (CONT'D)

LINE CONSTRUCTION (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	11.64	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	12.36	1.40	3%+1.00	a	
Driver Mechanic, Groundman-Experienced	10.91	1.40	3%+1.00	a	
All Pipe type Cable Installations, Maintenance Jobs or Projects					
Journeyman Lineman	14.55	1.40	3%+1.00	a	
Certified Lineman Welder	15.27	1.40	3%+1.00	a	
Cable Splicer	16.005	1.40	3%+1.00	a	
Groundman Equipment Operator	14.55	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	12.36	1.40	3%+1.00	a	
Groundman Truck Drivers	11.64	1.40	3%+1.00	a	
Groundman	10.91	1.40	3%+1.00	a	

FOOTNOTE:

a. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after a holiday

SHEET METAL WORKERS	15.73	2.27	2.38		.13
SPRINKLER FITTERS	15.55	.95	1.40		.08

DECISION NO. NY81-3039 - Mod.#1
(46 FR 31189 - June 12, 1981)
Monroe County, New York

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS, CEMENT MASONS, PLASTERERS, & STONE MASONS	14.82	1.00	1.15		
CARPENTERS, Building	13.36	1.23	1.56		.05
Millwrights & Piledrivers	13.23	1.23	2.15		.09
ELEVATOR CONSTRUCTORS	15.41	1.345	1.085	b+c	.035
ELEVATOR CONSTRUCTORS HELPER	10.78	1.345	1.085	b+c	.035
ELEVATOR CONSTRUCTORS HELPER (PROBATIONARY)	7.70				
IRONWORKER					
Ornamental, Reinforcing, Stone Derrickmen, Rigger, Rodman, Structural, Machinery Movers, Fence Erectors, Precast Concrete Erector	14.17	.90	1.55		.10
Sheeter	14.42	.90	1.55		.10
Sheeter Bucker-up	14.295	.90	1.55		.10
MARBLE, TILE & TERRAZZO WORKERS	15.39	1.00			
PAINTERS					
Basic	13.09	2.10	.80		.19
Wiper drywall	13.29	2.10	.80		.19
Stilts (drywall only), Epoxy (brush & roll), wall covering	13.34	2.10	.80		.19
Swing Scaffold, Window Brackets, Structural (up to 40'), Cherry pickers					
Mechanical lift, aerial lift	13.59	2.10	.80		.19
Regular Spray, Water Hydroblasting, Metalizing, Mechanical taper	13.69	2.10	.80		.19
Spray (epoxy), Sturctural Steel (over 40')	13.79	2.10	.80		.19
Sandblasting (from solid platform)	13.84	2.10	.80		.19
Sandblasting (any hanging platform), Steeple Jack	14.09	2.10	.80		.19
Bridges	14.47	2.10	.80		.19
PLUMBERS & STEAMFITTERS	15.08	1.025	3.38		.20
SHEET METAL WORKERS	14.62	.91	2.21		

DECISION NO. NY81-3039 Mod. #1 (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
BUILDING CONSTRUCTION					
GROUP I					
I-A	13.61	1.30	1.45	a	.15
I-B	13.86	1.30	1.45	a	.15
I-C	14.11	1.30	1.45	a	.15
I-D	14.36	1.30	1.45	a	.15
I-E	14.86	1.30	1.45	a	.15
I-F	15.36	1.30	1.45	a	.15
I-G	15.86	1.30	1.45	a	.15
I-H	16.36	1.30	1.45	a	.15
GROUP II	13.61	1.30	1.45	a	.15
GROUP III	13.25	1.30	1.45	a	.15
GROUP IV	11.99	1.30	1.45	a	.15
GROUP V	9.86	1.30	1.45	a	.15
GROUP VI	14.27	1.30	1.45	a	.15

DECISION NO. NY81-3039 - Mod.#1 (CONT'D)

LINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electrical Overhead & Underground Distrubution Work					
Journeyman Lineman & Technician	12.00	1.40	3%+1.00	a	
Cable Splicer	16.00	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	10.80	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Ground Truck Driver	9.60	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer)	10.20	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	9.00	1.40	3%+1.00	a	
All Overhead Transmission Line Work and Lighting for Athletic Fields					
Journeyman Lineman & Technician	13.80	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	12.42	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	11.04	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.73	1.40	3%+1.00	a	
Driver Mechanic, Groundman-Experienced	10.35	1.40	3%+1.00	a	
Sub-Station, Switching Structures (when not part of the line), Electrical, Telephone or CATV Commercial Work, Street Lighting & Signal Systems					
Journeyman Lineman & Technicians	14.55	1.40	3%+1.00	a	
Cable Splicer	16.005	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	13.095	1.40	3%+1.00	a	

DECISION NO. NY81-3039 - Mod. #1 (CONT'D)

LINE CONSTRUCTION (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	11.64	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	12.36	1.40	3%+1.00	a	
Driver Mechanic, Groundman-Experienced	10.91	1.40	3%+1.00	a	
All Pipe type Cable Installations, Maintenance Jobs or Projects					
Journeyman Lineman	14.55	1.40	3%+1.00	a	
Certified Lineman Welder	15.27	1.40	3%+1.00	a	
Cable Splicer	16.005	1.40	3%+1.00	a	
Groundman Equipment Operator	14.55	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	12.36	1.40	3%+1.00	a	
Groundman Truck Drivers	11.64	1.40	3%+1.00	a	
Groundman	10.91	1.40	3%+1.00	a	

FOOTNOTE:

a. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after a holiday

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DECISION NO. ND81-5131 - Mod #1 (46 FR 35008 - July 6, 1981) Burleigh, Cass, Grand Forks, Morton, Richland, Steele, Traill, Walsh, and Ward Counties North Dakota	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ASBESTOS WORKERS	$15.75	.60	.83		.01
BRICKLAYERS: STONEMASONS:					
Area 1	12.75		.50		
Area 2	13.80		.50		
Area 3	13.50	.60	.50		
CARPENTERS:					
Area 2:					
Carpenters	11.88		.65		.02
Piledrivermen	12.14		.65		.02
Area 3:					
Carpenters	11.99	.18	.70		.03
CEMENT MASONS:					
Area 2	10.75		.50		
ELECTRICIANS:					
Area 2:					
Electricians	13.58	.75	3%+1.00	6%	1%
Cable Splicers	13.98	.75	3%+1.00	6%	1%
PLASTERERS:					
Area 2	11.49		.50		
DECISION #OK81-4051-Mod. #1 46FR35886 - July 10, 1981 Pittsburg County, Oklahoma					
CHANGE:					
Soft floor layers	$11.46	.70	.70	8%+a	.03
a-Six Paid Holidays					
New Years Day					
Memorial Day					
Independence Day					
Labor Day					
Thanksgiving Day					
Christmas Day					

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DECISION NO. PA80-3031 MOD. NO. 6 (45 FR 59747 - August 29, 1980) Bradford, Tioga & Union Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Building, Heavy & Highway Construction:					
Bricklayers & Stonemasons	$11.55	1.15	.90		.025
Carpenters, Building	12.72	.70	.90		.05
Cement masons	11.10				
Electricians:					
Zone I	11.50	.65	3%+1.00	1.00	.02
Zone II	13.65	.60	3%+.40		.05
Zone III	12.95	.90	3%+.60	1.00	.10
Ironworkers:					
Structural, Ornamental & Reinforcing					
Zone I	14.265	1.49	1.46		.045
Laborers, Building					
Class I	8.35	.70	.60		
Class II	8.50	.70	.60		
Lathers	12.72	.70	.90		.05
Millwrights	14.42	.70	.90		.05
Soft Floor Layers	10.98	.70	.90		.05
Piledrivermen , Building	12.97	3.13	1.40	d	.13

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. PA80-3043					
MOD. NO. 9					
(45 FR 45849 - July 17, 1980)					
Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pa.					
CHANGE:					
BUILDING, HEAVY & HIGHWAY CONSTRUCTION:					
Piledrivermen, Building	$12.97	3.13	1.40	f	.13
Ironworkers:					
Structural	14.265	1.49	1.46		.045
Ornamental	14.265	1.49	1.46		.045
Reinforcing	14.265	1.49	1.46		.045
Plumbers	13.30	1.02	1.00		.11
Steamfitters	13.30	1.02	1.00		.11
DECISION NO. PA80-3044					
MOD. NO. 7					
(45 FR 49839 - July 25, 1980)					
Northumberland County, Pennsylvania					
CHANGE:					
BUILDING, HEAVY & HIGHWAY CONSTRUCTION:					
Bricklayers & Stonemasons	$12.25	.55	.80		
Carpenters, Building	12.72	.70	.90		.05
Electricians:					
Delaware, Lesis, & Trubut	11.50	.65	3%+1.00	1.00	.02
Ironworkers:	14.265	1.49	1.46		.045
Laborers, Building:					
South of Susquehanna River					
Group I	9.45	.60	.73		
Group II	9.92	.60	.73		
Group III	8.85	.60	.73		
Group IV	9.72	.60	.73		
Lathers	12.72	.70	.90		.05
Piledrivermen, Building	12.97	3.13	1.40	a	.13
Plumbers	13.30	1.02	1.00		.11
Soft Floor Layers	10.98	.70	.90		.05
Steamfitters	13.30	1.02	1.00		.11

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. PA80-3055					
MOD. NO. 10					
(45 FR 65902 - October 3, 1980)					
Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania					
CHANGE:					
BUILDING, HEAVY & HIGHWAY CONSTRUCTION:					
Electricians:					
Zone 7					
Commercial	$13.25	.70	3%+.80		.04
Painters:					
Zone 3					
Brush	11.05	1.10	1.00		
Steel & Spray	12.05	1.10	1.00		
Roller	11.05	1.10	1.00		
Piledrivermen	12.97	3.13	1.40	g	.13
Laborers:					
Heavy & Highway:					
Group 8	11.25	.95	.85		.25
OMIT:					
BUILDING, HEAVY & HIGHWAY CONSTRUCTION:					
Terrazzo Workers	13.44	.98	1.87		
Stonemasons:					
Zone I	13.80	.98	1.87		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX81-4015 - MOD. #5 (46 FR 20448 - April 3, 1981) Jefferson & Orange Cos., Texas					
CHANGE:					
Carpenters:					
Carpenters:					
Commercial	$14.37	.85	.60		.065
Millwrights	14.625	.85	.60		.05
Piledrivermen	14.51	.85	.60		
Pipefitters	14.62	.87	1.00		.15
DECISION NO. TX81-4016 - MOD. #4 (46 FR 20450 - April 3, 1981) Travis County, Texas					
Omit all rates & classifications for painters					
ADD:					
Painters:					
Journeyman painters, taping & floating of sheetrock	11.05				
Spray, sandblasting, swinging stage	11.55				
DECISION NO. TX81-4030 - MOD. #2 (46 FR 25984 - May 8,1981) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas					
CHANGE:					
Asbestos workers	13.05	.80	1.45		.02
Boilermakers	14.80	1.275	1.00		.04

Modification Page 24

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX81-4030 - MOD. #2 (Cont'd)					
Carpenters:					
Zone 2:					
Carpenters	$12.60	.48	.80		.10
Millwrights	13.10	.48	.80		.10
Lathers	14.40				.01
Plasterers	14.40				.01
Plumbers & pipefitters	13.40	.50	.65	1.06	
Sheet metal workers	13.92	.50	.72		.12
Power equipment ops.:					
Group 1	13.15	.65	.50		.15
Group 2	12.65	.65	.50		.15
Group 3	10.70	.65	.50		.15
DECISION NO. TX81-4036 - MOD. #1 (46 FR 30286 - June 5,1981) Lubbock County, Texas					
CHANGE:					
Asbestos workers	13.05	.80	1.45		.02
Boilermakers	14.80	1.275	1.00		.04
Carpenters	11.70	.48	.80		.01
Painters:					
Brush	10.15				
Spray, sandblasters	10.90				
Sheet metal workers	13.92	.50	.72		.12
DECISION NO. TX81-4037 - MOD. #2 (46 FR 30284 - June 5,1981) Wichita County, Texas					
CHANGE:					
Carpenters:					
Carpenters	12.60	.48	.80		.10
Millwrights	13.10	.48	.80		.10

Modification Page 25

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX81-4044 - MOD. #1 (46 FR 33194 - June 26, 1981) Bowie County, Texas					
CHANGE:					
Boilermakers	$14.80	1.275	1.00		.04
Electricians	13.27	.60	3%+.50		1/4%
Elevator constructors:					
Mechanics	12.87	1.345	.95	a+b	.035
Helpers	70%JR	1.345	.95	a+b	.035
Helpers (Prob.)	50%JR				
DECISION NO. TX81-4048 - MOD. #1 (46 FR 35903 - July 10, 1981) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas					
CHANGE:					
Building Construction:					
Asbestos workers:					
Zone 1	14.70	.80	1.55		.08
Plumbers & pipefitters:					
Zone 1	12.15	.40	.55		.04
Zone 2	12.65	.40	.55		.04
Zone 3	13.65	.40	.55		.04
Sheet metal workers:					
Zone 1	11.50	3%+.45	.72		.09
Zone 2	11.98	3%+.45	.72		.09
Zone 3	12.95	3%+.45	.72		.09
Incidental Paving & Utilities:					
Plumbers (Bell & Coryell):					
Zone 1	12.65	.40	.55		.04
Zone 2	13.65	.40	.55		.04
DECISION NO. UT81-5117 - Mod. #2 (46 FR 25986 - May 8, 1981) Statewide, Utah					
Change:					
Bricklayers	$13.50	.70	.62		.09

Modification Page 26

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. WY81-5108 - Mod. #4 (46 FR 20477 - April 3, 1981) Converse, Goshen, Laramie, Natrona, Niobrara, and Platte Counties, Wyoming					
Change:					
Roofers	$11.44				
Sheet Metal Workers:					
Area 1	13.93	.63	1.32		.23

SUPERSEDEAS DECISION

STATE: ALABAMA COUNTIES: *See Below
DECISION NUMBER: AL81-1271 DATE: Date of Publication
Supersedes Decision No: AL81-1124, December 30, 1980 in 45 FR 86185
DESCRIPTION OF WORK: Residential Construction consisting of single family homes and apartments up to and including four stories

*Counties: Autauga, Bullock, Butler, Chilton, Clarke, Conecuh, Coosa, Crenshaw, Dallas, Elmore, Lowndes, Monroe, Montgomery, Pike, and Wilcox.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING MECHANICS	$6.03				
BRICKLAYERS	8.00				
CARPENTERS	6.00				
CEMENT MASONS	5.70				
DRYWALL FINISHERS	6.00				
DRYWALL HANGERS	6.00				
ELECTRICIANS	8.53				
INSULATION INSTALLERS	4.65				
LABORERS:					
Pipelayers	4.00				
Unskilled	3.80				
PAINTERS, Brush	6.00				
POWER EQUIPMENT OPERATORS:					
Asphalt distributor/spreader	5.25				
Asphalt raker	4.70				
Backhoe	5.50				
Bulldozer	5.00				
Loader	5.25				
Motor Grader	6.20				
Roller	4.50				
Tractor	4.00				
PLUMBERS & PIPEFITTERS	6.50				
ROOFERS	7.00				
SHEET METAL WORKERS	5.70				
SOFT FLOOR LAYERS	6.50				
TILE SETTERS	6.38				
WELDERS - Rate for Craft					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: ALABAMA COUNTIES: *See Below
DECISION NO: AL81-1266 DATE: Date of Publication
Supersedes Decision No. AL81-1183 dated February 6, 1981 in 46 FR 11474
DESCRIPTION OF WORK: Building construction projects (does not include single family homes and apartments up to and including 4 stories)

*Counties: Lawrence, Limestone and Morgan	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.40	.66	.90		.10
BRICKLAYERS:					
Bricklayers, Marble Masons, Stonemasons, Pointers, Cleaners & Caulkers	12.75				
CARPENTERS:					
Carpenters & Soft Floor Layers	9.85	.60	.55		.07
Millwrights	10.50	.60	.55		.07
Piledrivermen	10.25	.60	.55		.07
CEMENT MASONS	12.00				
ELECTRICIANS:					
Electricians & Linemen	13.10	.55	3%+.70		
Cable Splicers	13.35	.55	3%+.70		
Groundmen	12.10	.55	3%+.70		
ELEVATOR CONSTRUCTORS	11.68	1.195	.95	a+b	.035
IRONWORKERS	11.57	.75	.75		.08
LABORERS (Lawrence County):					
Laborers, Mason Tenders, Plasterers' Tenders	7.44	.40	.50		
Air Tool Operators, Mortar Mixers & Pipelayers	7.64	.40	.50		
LABORERS (Limestone & Morgan Counties):					
Laborers & Mason Tenders	6.57	.40	.50		
Air Tool Operators & Mortar Mixers	6.82	.40	.50		
PLASTERERS	12.25				
PLUMBERS, PIPEFITTERS & STEAMFITTERS:					
Lawrence Co. (Eastern portion of Co., north from intersection of State Rt.20 to Wheeler Lake Including Moulton & Wren excluding Bankhead National Park), Limestone & Morgan County	12.90	.65	.75		.15

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS & STEAMFITTERS:					
Lawrence County -					
Remainder of County	13.85	.85	1.00		.13
ROOFERS	10.25		.40		.10
SHEET METAL WORKERS	12.28	.79	1.07		.09
TERRAZZO WORKERS & TILE SETTERS	12.50				

PAID HOLIDAYS:

A-New Year's Day, B-Memorial Day, C-Independence Day, D-Labor Day, E-Thanksgiving Day, F-Christmas Day

FOOTNOTES:

a. 6 paid holidays: A through F.

b. Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee who has worked in the business more than 5 years. Employer contributes 6% of regular hourly rate to Vacation Pay Credit for employee who has worked in the business less than 5 years.

POWER EQUIPMENT OPERATORS:					
GROUP A	12.13	.60	.65		.05
GROUP B	10.59	.60	.65		.05
GROUP C	9.67	.60	.65		.05

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

Group A - Backhoe, bulldozers, crane, crane car, central mixing plant, concrete pump, derrick, dragline, dredge, drill, elevating grader, finishing machine (concrete), forklift, front end loader, grade all, grout pump, helicopter pilot, hoist, locomotive engineer, mechanic, motor patrol, mucking mechanic, master pilot, pile driver, post hole digger, scraper (pull type & self prop.)., shovel, sweeper, tractor (spec. equip.,) trenching machine, well point & winch truck operators

Group B - Bituminous dist., central air comp., concrete mixer (port.), fireman floating equip., front end loader, rubber tire, ½ cu. yd. & under, locomotive brakeman, locomotive flagman, locomotive switchman, oiler-driver (35 tons crane & over), outboard motor boat (when used for towing), paving machine, post hole digger mounted on farm type tractor & walk behind type trenching machine operators

Group C - Air compressor (port.), conveyor, fireman stationary equip., oiler, outboard motor boat & pump operators

Oiler driver - additional $.10 per hour

All crane, derricks and gantry tower crane operators operating such equipment with an overall height of 150 ft. including jobs - additional $.50 per hour

All scraper operators operating Tandem scrapers receive $.25 per hour additional for each additional scraper (bowl).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Alaska COUNTIES: Statewide
DECISION NUMBER: AK81-5136 DATE: Date of Publication
Supersedes Decision No. AK81-5110 dated April 10, 1981, in 46 FR 21526
DESCRIPTION OF WORK: Building Projects (including residential project consisting of single family homes and apartments up to and including 4 stories), Heavy and Highway Projects and Dredging

AREA 1 (North of the 63rd Parallel) AREA 2 (South of the 63rd Parallel and west of the 141st Meridian) AREA 3 (East of the 141st Meridian)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$25.17	.78	$1.45		.10
BOILERMAKERS	21.47	1.30	1.25	1.00	.04
BRICKLAYERS; Blocklayers; Stonemasons	18.93	.90	2.95		.09
CARPENTERS:					
Area 1:					
Carpenters	19.10	.90	2.75		.10
Power actuated tool operator; Dewalt or similar type saw operator; Marlite and acoustical; Fire or floor repair work applicators; Nailing machine operator; Saw filer	19.50	.90	2.75		.10
Millwrights	19.65	.90	2.75		.10
Piledrivermen	17.99	.90	3.00		.10
Areas 2 and 3:					
Journeyman Carpenters	18.91	.90	2.00		.25
Acoustical and marlite applicators; Floor workers; Radial arm saw operators; Fire and floor workers	17.89	.90	2.00		.25
Millwrights	19.44	.90	2.00		.25
Piledrivermen	17.99	.90	3.00		.20
Residential:					
Areas 2 and 3 ONLY:					
Carpenters	13.51	.90	2.00		.25
Radial Arm Saw Operator	13.81	.90	2.00		.25
Flood and Fire Work	13.81	.90	2.00		.25
CEMENT MASONS:					
Area 1	17.38	1.10	3.00		.15
Area 2	17.13	1.10	3.00		.15
Residential (Statewide):					
Cement Masons	11.12	1.10	3.00		.15

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CULINARY WORKERS:					
Working Camp Manager; Head Cook; Baker; Cook-baker	$16.31	.50	$2.75		.04
Cook	15.95	.50	2.75		.04
DIVERS:					
Wet Pay Diver	41.94	.90	3.00		.20
Stand-by Diver	20.97	.90	3.00		.20
Tender	19.97	.90	3.00		.20
ELECTRICIANS:					
Electricians; Technicians	22.15	1.65	3%+3.00		.25
Cable Splicers	23.90	1.65	3%+3.00		.25
Residential Electricians:					
Wireman	12.00	1.20	3%		.10
ELEVATOR CONSTRUCTORS	22.445	1.195	.95	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	1.195	.95	a	.035
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
GLAZIERS:					
Area 1	16.80	.90	1.00		.20
Areas 2 and 3	19.92	1.10	1.25		.25
IRONWORKERS:					
Bender operator; Bridge; Fence erector; Machinery mover; Ornamental; Reinforcing; Sheeter; Structural	20.25	1.35	3.00		.30
LATHERS	21.14	1.10			.04
LINE CONSTRUCTION:					
Groundmen	20.15	1.65	3%+3.00		.25
Equipment operators; Linemen; Technicians	22.15	1.65	3%+3.00		.25
Cable Splicers	23.90	1.65	3%+3.00		.25
Powderman	20.15	1.65	3%+3.00		.25
MARBLE SETTERS; Terrazzo Workers	18.93	.90	2.95		.09
PAINTERS:					
Area 1:					
Zone 1: Within a 10 mile radius of the Fairbanks Post Office including Ft. Wainwright					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Zone 2: Beyond 10 miles and up to 40 miles radius of the Fairbanks Post Office including Eielson Air Force Base and all the Sites within this territory					
Zone 3: Beyond 40 miles radius of the Fairbanks Post Office					
Zones 1 and 3:					
Brush; Roller; Paper; Vinyl	$21.91	$1.55	$2.00		.21
Utilidor; Swing; Sign; Bosun	22.19	1.55	2.00		.21
Structural steel; Pot tender; Sandblaster	22.47	1.55	2.00		.21
Epoxy; Tar; Finish metal spray	23.03	1.55	2.00		.21
Spray Painter	22.91	1.55	2.00		.21
Tapers, hand	22.22	1.55	2.00		.21
Tapers, machine	23.34	1.55	2.00		.21
Buffer Operator	22.51	1.55	2.00		.21
Hardwood Finishers	22.75	1.55	2.00		.21
Zone 2:					
Brush; Roller; Paper and vinly hangers	22.87	1.55	2.00		.21
Utilidor; Swing; Bosun; Sign	23.15	1.55	2.00		.21
Structural Steel, Pot Tender, Sand Blast	23.43	1.55	2.00		.21
Epoxy; Tar; Finish metal spray	23.94	1.55	2.00		.21
Spray Painter	23.87	1.55	2.00		.21
Tapers, hand	23.17	1.55	2.00		.21
Tapers, machine	24.29	1.55	2.00		.21
Buffer Operators	23.46	1.55	2.00		.21
Hardwood Finishers	23.70	1.55	2.00		.21

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Zone 1, 2, and 3:					
Height Pay; All work on any form of scaffolding or staging over 40 ft. will be paid $.25 more per hour and for every additional 20 ft. $.25 more per hour will be paid to the employee. The height of work shall be determined from the ground to the point of hookup.					
Areas 2 and 3:					
Brush; Roller; Sign	$22.00	$1.30	$2.00		.25
Paper and vinyl; Swing Stage; Taper/Drywall; Structural steel	22.40	1.30	2.00		.25
Spray; Sandblast; Pot Tender	22.60	1.30	2.00		.25
Epoxy and tar applicator	23.00	1.30	2.00		.25
Steel jack and tower	23.80	1.30	2.00		.25
Residential Painters	13.20	1.30	2.00		.25
Height Pay: all classifications, with the exception of steeple jacks and tower painters, a $.25 hourly premium shall be paid for swing stage work on a structure with height in excess of 40 ft. an additional $.25 per hourly height pay shall be paid for each additional 50 ft. thereafter. Height pay on all towers and steeplejack work shall start at the 150 ft. level. $.50 per hour above the scale shall be paid for each additional 100 ft.					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS:					
Area 1	$18.50	$1.10	$3.00		.15
Area 2	18.25	1.10	3.00		.15
PLUMBERS; Steamfitters:					
Area 1	22.52	1.45	3.40		.35
Area 2	20.60	1.00	2.90		.28
Residential Plumbers	16.48	1.00	2.90		.28
Area 3	19.94	1.30	3.65		.25
ROOFERS:					
Area 1	19.00	1.40	3.30		.05
Areas 2 and 3	18.70	1.40	3.30		.05
SHEET METAL WORKERS:					
Area 1	23.16	.88	2.50		.19
Areas 2 and 3	23.08	1.01	2.47		.22
Residential construction:					
Areas 2 and 3	14.08	.86	1.49		.22
SOFT FLOOR LAYERS:					
Area 1:					
Zones 1 and 3	20.33	1.35	2.00		.21
Zone 2	21.16	1.35	2.00		.21
Areas 2 and 3	20.30	.85	1.00	4%	.20
SPRINKLER FITTERS	22.51	.95	1.40		.08
TERRAZZO WORKERS	18.93	.90	2.95		.09
TILE SETTERS	18.26	.90	2.95		.09
LABORERS: (Statewide): (RESIDENTIAL):					
Group 1	14.61	1.10	1.50		.10
Group 2	15.11	1.10	1.50		.10

RIGGERS; WELDERS: Receive rates for craft performing operation to which rigging or welding incidental.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE:
a. Employer contributes 8% of the basic hourly rate for over 5 years' service and 6% of the basic hourly rate for 6 months' to 5 years' of service as Vacation Pay Credit. Six Paid Holidays: A through F.

LABORERS: RESIDENTIAL
STATEWIDE

Group 1: General Labor; Window Cleaner; Laborers' building; Carpenters' Tenders; Material Handlers and Hook Tenders; Form Strippers; Signal Man; Sandblast, Pot Tender, Sandblaster; Saw Tenders; Ditch Diggers; Watchman; Base and Floor Machine Man; Pneumatic or power tools; Compactor; Rigger; Choke Setter; Concrete Labor (including Vibrator Man, Power Buggy and Concrete Power Saw); Steam Point or Water Jet Operator; Jackhammer or Pavement Breakers; Insulator

Group 2: Tenders, Plasterers', Bricklayers', Cement Finishers'; Burning and Cutting Torch; Chain Saw and Power Saws (Brush Cutter); Cement or Lime Dumper or Handler (sack or bulk); Chain Saw Filer

LABORERS: Building, Heavy, & Highway:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$15.87	$1.10	$3.00		.20
Group 2	16.12	1.10	3.00		.20
Group 3	16.42	1.10	3.00		.20
Group 4	16.62	1.10	3.00		.20
Group 5	16.82	1.10	3.00		.20
Group 6	17.04	1.10	3.00		.20

Group 1: Window Cleaner; Building Laborers; Carpenter Tender; Material Handlers; Hook Tenders; Signal Man/Dumpman; Flagman; Sandblast Pot Tender; Saw Tenders; Pitman; Utiliwalk and Utilidor; Ditch Diggers; Monolithic Workers (sewers); Dryer Man (bridges, dams); Topman and Bull Gang (tunnel and shaft); Brakeman (tunnel or shafts); General Laborer; Sandblaster; Oil Spill Clean Up: Camp Maintenance Labor

Group 2: Base and Floor Machine Man; Pneumatic or Power Tools; Compactor; Rigger; Hydroseeder Nozzleman; Choke Setter; Tank Cleaners; Stake Hopper; Grademen; Concrete Labor (including Vibratorman, Power Buggy and Concrete Power Saw, Curb and Gutter Man); Asphalt Worker (including plant crew); Tar Rubber - add $.25 per hour to scale; Steam Point or Water Jet Operator; Mucker and Laborers (tunnel and shaft); Nippers (tunnel or shafts); Monolithic Workers

Group 3: Jackhammer or Pavement Breakers; Catylist; Epoxy (tank cleaning); Chuck Tender (Wagon and Track Drills); Mason Tender and Mud Mixer (sewers); Insulators (foam gun operator)

Group 4: Bricklayers; Cement Finishers; Gunnite Operator; Burning and Cutting Torch; Pipelayer (culvert and multiplate); Plasterers' Tenders; High Scaler; Sloper (over 20 ft.); Chain Saw and Power Saws (brush cutter); Rakers (asphalt crew); Tar Rubber - add $.25 per hr. to scale; Cement or Lime Dumper or Handler (sack or bulk); Pipelayers (sewer or water mains); Sewer Caulkers; Timberman (sewer); Pipe Builder (stove pipe crews); Sandblaster (bridges and dams); Monolithic Workers; Powderman Tender

Group 5: Timber Faller; Wagon Driller; Air Trac Wagon Driller; Chain Saw Filer; Miners, tunnels or shafts; Retimberman (tunnels or shafts)

Group 6: High Rigger and Tree Topper; Powderman (tunnels or shafts - add $.30 per hour); Miners, Shafts and Raises (tunnel or shafts); Toxic Pay, add $.35 per hour; Scaffold Pay, add $.15 per hour over 10 ft., $.30 per hour over 40 ft. based on free-fall distance

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$18.30	$1.20	$3.00		.15
Group 1-A	19.43	1.20	3.00		.15
Group 2	17.81	1.20	3.00		.15
Group 3	17.35	1.20	3.00		.15
Group 4	16.33	1.20	3.00		.15

Group 1: "A" Frame Trucks; Helicopters; Transporters; Deck Winches: Double power Drum; Backfiller; Batch Plant Operator: Batch and Mixer, over 200 yds. per hour; Belcrete with power pack and similar Conveyors; Bending Machine; Bulldozer, Quad or HD 41 or similar; Cableways and Highlines, 3 yds. and under; Cleaning Machine; Coating Machine; Cranes: Shovels, Backhoes, Draglines, Clamshells (Crawler, truck type, Rubber-tired, Creter, Floating Locomotive, Whirley, either 3 yds. or under or 150" boom, including jibs and under, or 45 tons and under - Hydralifts or Transporters, all track or truck type - Hyster Cat Cranes and attachments, Sidebooms, under 45 tons); Derricks; Ditching or Trenching Machine (16" or over); Drilling Machines, Core, Cable, Rotary and Exploration; Hydro Ax and similar; Loaders (Forklifts with power boom and swing attachment; Overhead and Front End, 2½ yds. through 4 yds.; Loaders with Forks or Pipe Clamps); Mechanics, Welders, Bodyman; Mixers (mobile type with hoist combination); Motor Patrol Grader (over Model 14 or similar types); Mucking Machines (Mole, Tunnel Drill and/or Shield); Operator on Dredges; Piledriver Engineers, L.B. Foster, Puller or similar, Paving Breaker; Power Plant, Turbin Operator, 300 K.W. and over (power plants or combination of power units over 300 K.W. on highway or airfield construction or Quarry operations); Sauerman-Bagley; Scrapers, Tournapulls, Caterpillar, Euclid and similar type equipment over 25 yds. through 40 yds.; Shot Blast Machine; Sub Grader (Gurries, C.M.I. and C.M.I. Roto Mills and similar types); Tack Tractor; Truck mounted Concrete Pump; Wate Kote Machine; Hover Craft, Flex Craft, Loadmaster, Air Cushion, Terrain Vehicle, Helicopter Transporter, Cableways, Rollingon, Dredge Barge-cable, Highline or Cable Car, Camp Maintenance Engineer, Boat Coxswains; Asphalt Roller; Bulldozers; Crusher; Finishing Machine Operator, concrete paving, sidewalk, curb and gutter machine; Loaders, elevating Belt type, Euclid and similar types; Motor Patrol Grader, 14 and under; Scrapers, 25 yds. and under; Spreaders; Blaw Know, Cedarapids, Barber Greene, Screed, Slurry Machine; Nodwell Sno Cat

POWER EQUIPMENT OPERATORS (Cont'd)

Group 1-A: Cableways and Highlines, over 4 yds.; Cranes: Shovels, Backhoes, Draglines, Clamshells (Crawler, truck type, Floating Locomotive, Whirley, either over 3 yds. or over 150' boom, including jibs or over 45 tons); Tower Cranes, Pecco, Lorain, Bucyrus and similar types; Hyster Cat Cranes and attachments, Sidebooms, 45 tons and over; Loader, over 4 yds.; Motor Patrol Grader (finish: when finishing to final grade, red, blue or similar hubs); Power Plants (1000 k.w. and over); Slip Form Paver, C.M.I. and similar types; Tournapulls, Caterpillar, Euclid Scrapers and similar type equipment, over 40 yds.

Group 2: Batch Plant Operator: Batch and Mixer, 200 yds. per hour and under; Cement Hogs and Concrete Pump Operators; Compressors: Steel Erection, including Sandblasting, painting of same; Piledriving; Conveyors (except as listed in Group 1); Hoists on Steel Erection, Towermobiles and Air Tuggers; Loaders, Elevating Grader, Dumor and similar; Locomotives: Rod and Geared Engines; Mixers Screening, washing plant; Sideboom (cradling rock drill); Skidder; Trenching Machine, under 16"; Service Oiler, Journeyman; Boiler-Fireman

Group 3: "A" Frame Trucks, Deck Winches; Single Power Drum; Bombardier (tack or tow rig); Boring Machine; Brooms, power Wayne, Saginaw and similar types; Bump Cutter (Concut, Christenson or similar types; Compressors, excavating; Farm Tractor; Forklift, industrial type; Gin Truck or Winch Truck with poles when used for hoisting; Hoists, Air Tuggers, Elevators; Loaders (Elevating-Athey, Barber Greene and similar types; Forklifts or Lumber Carrier (on construction job sites); Forklifts with tower; Overhead and Front End, under 2½ yds.); Locomotives: Dinkey (air, steam, gas and electric) Speeders; Mechanics. light duty; Mixers: Concrete Mixers and Batch, 200 yds. per hour and under; Oil, Blower Distributors; Pipeline Dream; Posthole Diggers, mechanical; Pot Fireman (power agitated); Power Plant, Turbine Operator, under 300 k.w.; Pumps: Fuller Kenyon, water; Rollers, Tampers, Vibrators, all except Asphalt Saws, concrete; Straightening Machine; Tow Tractor; Grade Checker, Stake Hopper; Rig Oiler, over 45 ton, over 3 yds. or over 150' boom; Drill Tender

Group 4: Rig Oiler (advances to Group 3, if over 45 tons or 3 yards or 150' boom); Parts and equipment Coordinator; Swamper (on Trenching Machines or Shovel type equipment); Spotter; Steam Cleaner

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$16.36	$1.99	$3.10		.20
Group 2	16.42	1.99	3.10		.20
Group 3	15.89	1.99	3.10		.20
Group 4	16.74	1.99	3.10		.20
Group 5	17.14	1.99	3.10		.20
Group 6	17.45	1.99	3.10		.20
Group 7	17.74	1.99	3.10		.20
Group 8	18.05	1.99	3.10		.20
Group 9	18.36	1.99	3.10		.20
Group 10	18.67	1.99	3.10		.20
Group 11	18.98	1.99	3.10		.20
Group 12	19.29	1.99	3.10		.20
Group 13	19.59	1.99	3.10		.20
Group 14	16.88	1.99	3.10		.20
Group 15	15.61	1.99	3.10		.20
Group 16	16.04	1.99	3.10		.20
Group 17	16.72	1.99	3.10		.20
Group 18	16.98	1.99	3.10		.20
Group 19	17.25	1.99	3.10		.20
Group 20	17.52	1.99	3.10		.20
Group 21	17.69	1.99	3.10		.20
Group 22	16.66	1.99	3.10		.20
Group 23	15.78	1.99	3.10		.20

TRUCK DRIVERS

Group 1: Buggymobile; Hyster Operators (handling bulk aggregate); Lumber Carrier

Group 2: Semi or Truck and Trailer; Dumpsters; Batch Trucks, over 5 yards; Dump Trucks, over 5 yards up to and including 10 yards; Fuel Truck; Greasers of Grease Trucks; Flat Beds, dual rear axle; Ready Mix: over 3 yards up to and including 5 yards; Water Wagon, semi; Water Wagon, dual axle Winch Trucks; Flat Bed including "A" Frame, manufactures rating over 5 tons; Bull Lift and Fork Lifts, over 5 tons; Front End Loader with Forks; Partsman and Outside Expeditor; Bus Operator, over 30 passengers, Track Truck Equipment; (all Terrain vehicles, Form Distributor Truck, double axle; Loadmaster (air and water operations); Air Cushion or similar type vehicle; Fire Trucks - double axle; Vacuum Truck; Vacuum Truck Sweepers - dual axle; Riggers; Combination Truck, fuel and grease; Greaser; Hydro Seeders, dual axle

Group 3: Batch Truck up to and including 5 yards; Dump Truck (including Rockbuggy and Trucks with pumps) up to and including 5 yards; Flat Beds, single rear axle; Water Wagon, single axle Winch Truck, Flat Bed, including "A" Frame manufactured rating 5 tons and under; Bull Lifts and Fork Lifts up to and including 5 tons; Bus Operator, up to 30 passengers; Form Distributor Truck, single axle, Hydro Seeder, single axle, team drivers (horses, mules and similar equipment); Vacuum Trucks and Truck Sweepers, single axle; Fire Trucks, single axle; Ambulance

Group 4: Dump Trucks, over 10 yards up to and including 20 yards; Tire Service Man; Lowbed Heavy-duty Trailer; Oiler Distributor Drivers; Ready Mix: Compactor (when pulled by rubber-tired equipment); Lowboys, including attached trailer and jeeps

Group 5: Dump Trucks, over 20 yards up to and including 30 yards

Group 6: Dump Trucks, over 30 yards up to and including 40 yards

Group 7: Dump Trucks, over 40 yards up to and including 50 yards

Group 8: Dump Trucks, over 50 yards up to and including 60 yards

TRUCK DRIVERS (Cont'd)

Group 9: Dump Trucks, over 60 yards up to and including 70 yards

Group 10: Dump Trucks, over 70 yards up to and including 80 yards

Group 11: Dump Trucks, over 80 yards up to and including 90 yards

Group 12: Dump Trucks, over 90 yards up to and including 100 yards

Group 13: Dump Trucks, over 100 yards (above scale to be paid on actual water level measurements)

Group 14: Turn-O-Wagoner, DW-10 when not self-loading

Group 15: Gravel Spreader Box Operator on Truck; Pickup (pilot cars, all light-duty vehicles); Warehouseman, Class 2: Farm type rubber-tired tractor (material hauling or pulling wagons); Swampers

Group 16: Ready Mix: Up to and including 3 yards

Group 17: Ready Mix: Over 5 yards up to and including 7 yards

Group 18: Ready Mix: Over 7 yards up to and including 9 yards

Group 19: Ready Mix: Over 9 yards up to and including 12 yards

Group 20: Ready Mix: 13 yards and over

Group 21: Ready Mix, semi with double bowl mixer

Group 22: Water Wagon, when pulled by Euclid or similar type equipment

Group 23: Warehouse - Class 1

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: ARKANSAS COUNTY: STATEWIDE
DECISION NO. AR81-4060 DATE: Date of Publication
Supersedes Decision #AR80-4020 dated March 14, 1980 in 45FR16794
DESCRIPTION OF WORK: Construction, alteration, and/or repair of streets, highways, runways, and water and sewer utilities, (but does not include structures on highway rest areas).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$6.00				
Carpenters	6.00				
Concrete finishers	6.00				
Electricians	7.25				
IRONWORKERS:					
Structural	5.25				
Reinforcing	4.50				
LABORERS:					
Air tool operator	4.25				
Asphalt heater operator	4.25				
Asphalt raker	4.85				
Carpenter helper	4.35				
Chain saw operator	4.35				
Checker grade	4.50				
Concrete finisher helper	4.35				
Concrete joint sealer	4.35				
Concrete saw operator	4.35				
Form setter	4.50				
Laborer	3.35				
Pipelayer	4.50				
Powderman	5.25				
Vibratorman	4.25				
Painter	5.25				
Pile driver leadman	5.25				
POWER EQUIPMENT OPERATORS:					
Aggregate spreader op.	4.75				
Asphalt plant fireman	4.00				
Asphalt drier operator	4.00				
Batch plant operator	4.75				
BULLDOZER OPERATORS:					
Finish	5.75				
Rough	5.00				
Bull float operator	4.65				
Concrete curing machine op	4.85				
CONCRETE MIXER OPERATOR:					
Less than 5 sacks	4.35				
5 sacks or over	5.25				
Backhoe op. - rubbertired (1 yard or less)	5.00				
Cherry picker operator	5.00				
Concrete paver operator	5.50				
Concrete spreader operator	5.50				

POWER EQUIPMENT OPERATOR (CONTD)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CRANES, DERRICK, DRAGLINE, SHOVEL, BACKHOE OPERATORS:					
1-1/2 yard or less	$5.75				
Over 1-1/2 yard	6.00				
Crusher operator	4.65				
Distributor operator	4.65				
Drill operator (wagon or truck)	5.00				
Elevating grader operator	5.50				
Euclid or like equipment op. (bottom or end dump)	4.50				
Finishing machine operator	5.00				
Forklift operator	4.15				
Form grader operator	4.15				
FRONT END LOADER OPERATOR:					
Finish	5.50				
Rough	5.00				
Hydro seeder operator	4.50				
Mechanic	5.75				
Mechanic helper	4.50				
MOTOR PATROL OPERATOR:					
Finish	5.75				
Rough	5.00				
Mulching machine operator	4.50				
Oiler and greaser	4.50				
Pile driver operator	5.25				
Pug Mill operator	4.25				
Roller op.(self-propelled)	4.50				
SCRAPER OPERATORS:					
Finish	5.75				
Rough	5.00				
Sod slicing machine op.	4.10				
Stabilizer mixing machine	4.65				
TRACTOR OPERATORS:					
Crawler type	4.50				
Farm and wheel	4.25				
Wheel type (with attachments 1 yard or under)	4.65				
Trenching machine operator	4.65				

DECISION NO. AR81-4060

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
STONEMASONS	$6.00				
TRUCK DRIVERS:					
Distributor truck driver	4.50				
Semi-trailer	4.50				
Lowboy driver	5.00				
Transit mix truck driver	4.50				
Truck driver (heavy-maximum pay load in excess of 3000 lbs.)	4.25				
Truck driver (light-maximum pay load 3000 lbs.)	4.00				
WELL DRILLERS	5.75				

WELDERS--receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii).

SUPERSEDEAS DECISION

STATE: Minnesota COUNTIES: See Below
DECISION NUMBER MN81-2042 DATE: Date of Publication
Supersedes Decision No. MN80-2036 dated June 27, 1980 in 45 FR 43581
DESCRIPTION OF WORK: Heavy and Highway Construction Projects

COUNTIES

Anoka	Dakota	Houston	Ramsey	Steele
Benton	Dodge	Lake	Rice	St. Louis
Blue Earth	Fairbault	LeSueur	Scott	Wabasha
Carlton	Freeborn	Mower	Sherburne	Waseca
Chisago	Goodhue	Nicollet	Sibley	Washington
Cook	Hennepin	Olmsted	Stearns	Winona
				Wright

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS & PILEDRIVERMEN:					
Counties of Anoka, Carver, Chisago, Dakota, Hennepin, Ramsey, Scott, & Washington, Sherburne County (North of the Northern Boundary of T-34- or West of the western Boundary of R-27), & Wright County east of & including Minnesota Highway #25	$11.66	.60	.60	.60	.02
Counties of Cook, Lake, St. Louis	13.03				
Carlton County	11.73	.40	.40	.50	
Benton County, the Remainder of Sherburne & Wright Counties, Stearns Co. east of a north-south line drawn from the Intersection of Stearns, Todd County	10.62	.50		.75	
Blue Earth County (entire Co. except N.W. corner including cities of Butternut, Judson & Cambria), LeSueur County (West 2/3 of county including Cities of New Sweden, Nicollet, Norseland, North Mankato & St. Peter), Waseca Co. (N.W. Corner including City of Smithmill), & Sibley County (S.E. corner incl. Cities of Henderson & Rush River	11.88	.50			

DECISION NO. MN81-2042

CARPENTERS & PILEDRIVERMEN (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Rice Co., Dodge Co. (NE portion including Cities of Clermont & West Concord), Goodhue County (Along west border including Cities of Geyon, Denmison, Skyburg, Sogn, Stanton & Wangs), Steele Co. (Entire Co. except along south border including Cities of Blooming Prairie & Ellendale), Waseca Co. (Entire Co. except Smithmill in NW corner & along the South border including the cities of Matawan & New Richland) & the Remainder of LeSueur Co.	10.58	.60	.60	.60	
Olmsted Co. Fillmore Co. The vicinity of the Cities of Borne, Concord, Dodge Center, Kasson, Dansville, Eden, Materville & Wasioja), Mower Co. (N.W. Corner including the city of Racine & Wabasha County (in the vicinity of the Cities of Elgin, Hammond, Millville, Plainview, Conseption, Dunfries, Jarret, South Troy & Theilman	11.18	.60	.60		
Counties of Fairbault, Freeborn, Houston & Winona & the remainder of Dodge, Fillmore, Goodhue, Mower, Steele, Wabash & Waseca Cos.	12.38				
Remainder of Sibley & Stearns Counties	11.37				

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CEMENT MASONS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Cos. of Anoka, Carver, Chisago, Dakota, Hennepin, Kanabec, Ramsey, Scott, Sherburne, Sibley, Washington & Wright	12.43	.60	.60		
Cos. of Carlton, Cook, Lake & St. Louis Co. South of T-55-N	12.645	.40			
St. Louis North of T-54-N	12.25	.40			
Counties of Benton & Stearns	11.95		.25		
Counties of Blue Earth & Nicollet, LeSueur Co. (East ½ including the Cities of Cleveland, Elysian, Kasato, LeCenter, LeSueur, Lexington, Ottawa, & St. Thomas), Waseca Co. (East ½ including the Cities of Alma City, Janesville, Smithmill & Waldorf	12.05				
Fairbault Co. & Freeborn Cos. (West of a line running north & south from Geneva to Gordansville	11.00	.70	.50		
Counties of Rice & Steele, the Remainder of LeSueur & Waseca Cos. & Dodge Co. West of Highway 56	12.05				
Olmsted Co., Dodge Co. (East of Highway 56), & Fillmore Co. east of a line drawn north & south established east of the City of Dodge Center	11.25	.70	.25		
Counties of Houston & Winona & the Remainder of Fillmore County	12.05				

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CEMENT MASONS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Counties of Goodhue & Wabasha	12.05	.70	.35		
Mower County & the Remainder of Freeborn	11.25	.70	.25		
IRONWORKERS:					
Counties of Anoka, Benton, Blue Earth, Carver, Chisago, Dakota, Dodge, Fairbault, Fillmore, Freeborn, Goodhue, Hennepin, Houston, LeSueur, Mower, Nicollet, Olmsted, Ramsey, Rice, Scott, Sherburne, Sibley, Stearns, Steele, Wabasha, Waseca, Washington, Winona & Wright; Kanabec Co., (excluding north 1/3 of County including cities of Warman, Kruschel & Woodland), & Pine Co. (the SW corner including the cites of Pine City, Henriette, Greely, Rock Creek & West Rock)	14.80	.95	.90		.04
Counties of Carlton, Cook, Lake & St. Louis Counties	12.30	.50	.90	1.00	.02
LABORERS:					
Landscape and Sodlayers	6.35	.50	1.5		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
LINEMEN:					
Counties of Carlton, Cook, Lake, St. Louis Cos., Chisago, Dakota, Ramsey, Rice & Washington Counties, Anoka except Fridely, Grow, Anoka & Ramsey Twps.), Goodhue Co. (Entire Co. except Pine Island, Minneola, Rosecoe & Zumbrota Twps.), LeSueur County (that portion east of Cleveland, Sharon, Tyrone and Washington Twps.); Sherburne Co. (that portion east of Becker & Santiago Twps.) & Wabasha Co. (Entire Co. except Elgin & Plainview Twps.), Winona County	15.50	.45	6%		½ of 1%
Counties of Benton; Blue Earth, Carver, Hennepin, Nicollet, Scott, Sibley, Stearns, Wright & the Remainder of Anoka, LeSueur & Sherburne cos.	15.50	.45	6%		½ of 1%
Counties of Dodge, Fillmore, Freeborn, Mower, Olmsted, Steele, Fairbault, Waseca and Houston Counties	13.95	.45	6%	5%	½ of 1%
PAINTERS:					
Counties of Carlton, Cook, Lake, St. Louis Counties:					
Brush	10.81	.40	.40		.11
Structural Steel & Bridges	11.41	.40	.40		.11
Counties of Chisago, Dakota, Ramsey & Washington					
Brush	10.84	.55	.25		.12
Structural Steel & Bridges	11.44	.55	.25		.12
Counties of Anoka, Carver, Hennepin, Scott and the eastern 2/3 of Sherburne & Wright Cos.:					
Brush & Roller	12.01	.65	.50		.13

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D)					
Structural Steel & Bridges	12.61	.65	.50		.13 .13
Counties of Benton, & Stearns (the Western 1/3 of Sherburne & Wright Cos.)					
Brush & Roller	9.08	.50	.40		.11
Structural Steel	10.08	.50	.40		.11
Spray	10.08	.50	.40		.11
Counties of Dodge, Fillmore, Goodhue, Houston, Mower, Olmsted, Wabasha & Winona:					
Brush & Roller	11.45	.37	.45		.08
Spray	11.95	.37	.45		.08
Counties of Blue Earth, Fairbault, Freeborn, Nicollet, Sibley, Rice, LeSueur, Steele & Waseca					
Brush and Tapers	12.27	.75	.35		.09
Structural Steel & Bridges	13.02	.75	.35		.09
WELL DRILLING: (Construction or Repair of Water wells and aprurtenances)					
Metropolitian Area					
Hennepin, Ramsey, Washington, Anoka, Carver, Scott & Dakota Counties; that part of Wright Co. east of T. H. 25, Sherburne County South of T-34N & East of R-27W 7 that Part of Chisago Co. south of T-35N					
Field Work					
Driller -Pumpman	9.00				
General - Helper	7.40				
Mechanic Welder	8.35				
Driver or Service Man	7.40				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
WELL DRILLING (CONT'D)					
Rural Area					
Remainder of Counties					
Field Work					
Driller - Pumpman	9.00				
General - Helper	6.50				
Mechanic - wleder	7.85				
Driver or Service Man	6.95				

DECISION NO. MN81-2042 MINN-9-LAB

LABORERS: Counties of Anoka, Carver, Chisago, Dakota, Hennepin, Ramsey, Scott, Sherburn, Washington & Wright	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	9.85	.60	.60	.40	
CLASS 2	9.95	.60	.60	.40	
CLASS 3	10.00	.60	.60	.40	
CLASS 4	10.10	.60	.60	.40	
CLASS 5	10.15	.60	.60	.40	
CLASS 6	10.20	.60	.60	.40	
CLASS 7	10.25	.60	.60	.40	
CLASS 8	10.28	.60	.60	.40	
CLASS 9	10.30	.60	.60	.40	
CLASS 10	10.48	.60	.60	.40	
CLASS 11	10.48	.60	.60	.40	

CLASS 1 - Unskilled Laborer, Drill Runner Helper, Gardner, Power Monkey, Rein. Steel Lab., Rein. Steel Salamander, Heater & Blower Tender, Carpenter Tender; Winch Handler
CLASS 2 - Laborers, Wrecking & Demolition; Bit. Batchermen (Stationary Plant); Bricklayer Tender; Cement Handler; Cement Coverman (Batch Trucks); Compaction Equip. Shoveler, Batchermen Conc., Conc. Vibrator Tamper & Puddler (Paving), Conc. Longitudinal Floatmen; Conduit Layer (w/o wiring); Chipping Hammer, Curb Setter (Stone or Precast Conc.) Kettleman (Bit or lead); Service Connection Maker;Power Buggy; Joint Sawer, Squeeze Man (Bit., Brick or Block); Stabilizing Batchermen (Stationary Plant); Stonemasons Tender; Drill Runner (Heavy, including Churn Drill)
CLASS 3 - Chainsaw Man, Conc. Mixer (1 Bag); Jackhammer Man & Paving Buster; Mortar Mixer; Pipe Handler; Pipe Derrickman (Triped, manual)
CLASS 4 - Bottom Man (Sewer, Water or Gas Trench, more than 8' below starting level of manual work); Tunnel Labor (Atmospheric pressure) Underpinning work; Caisson work other than 8" below level of manual work Open ditch Work

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LABORERS (CONT'D)

CLASS 5 - Bituminous Tamper; Pipelayers; Sand Cushion & Bedmaker
CLASS 6 - Cement Gun (1½ & over); Leadman
CLASS 7 - Nozzlemen (Gunite)
CLASS 8 - Brick or Block Paving Setter
CLASS 9 - Bituminous Raker, Floater & Utility Man
CLASS 10 - Powderman
CLASS 11 - Tunnel Man (Air pressure); Tunnel Miner

DECISION NO. MN80-2036

MINN-10-LAB

LABORERS: St. Louis County	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
North of T-55					
CLASS I	10.23	.50	.15	.25	
CLASS II	10.33	.50	.15	.25	
CLASS III	10.48	.50	.15	.25	
CLASS IV	10.53	.50	.15	.25	
CLASS V	10.58	.50	.15	.25	
CLASS VI	10.63	.50	.15	.25	
CLASS VII	10.73	.50	.15	.25	
CLASS VIII	10.83	.50	.15	.25	

CLASS I - Unskilled Laborers; Laborers; Wrecking & Demolition; Bricklayer Tender; Drill Runner Helper; Pipehandler (water, gas cast iron); Salamander Heater & Blower Tender; Carpenter Tender Stonemasons Tender
CLASS II - Bituminous Shoveler, Bottom Man (sewer, water or gas Trench), Cement Handler (bulk or bag); Chain Saw Man; Compaction Equipment (hand operated); Concrete Mixer Operator (1 bag); Concrete Shoveler; Tamper & Puddler (paving) Concrete Vibrator; Conduit Layers (w/o wiring); Dumper (wagon, truck, etc),Formsetter (municipal type curb & side walk) Formsetters (pavement); Jackhammerman & Paving Busters; Kettleman(Bituminous or lead); Mortar Mixer, Power Buggy, Joint Drawer, Tunnel Laborer (atmospheric pressure)
CLASS III - Bituminous Tamper, Cofferdam Work; Caisson work
CLASS IV - Drill Runner (Heavy, including Churn drill)
CLASS V - Bituminous Rake, Floater & Utility Man; Pipelayers (sewer, water, gas); Leadman (Gunite)
CLASS VI - Nozzleman
CLASS VII - Powderman
CLASS VIII - Tunnel Miner

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LABORERS: Counties of Blue Earth, Dodge, Fairbault, Fillmore, Freeborn, Goodhue, Houston, LeSueur, Mower, Nicholett, Olmstead, Rice, Steele, Wabasha, Waseca & Winona	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	9.90	.50	.15		
CLASS 2	10.00	.50	.15		
CLASS 3	10.05	.50	.15		
CLASS 4	10.15	.50	.15		
CLASS 5	10.30	.50	.15		
CLASS 6	10.35	.50	.15		
CLASS 7	10.40	.50	.15		

CLASS 1 - Unskilled Laborers, Bricklayer & Carpenter Tenders; Drill Runner Helper; Laborers-Wrecking & Demolition; Pipe Handler (Water, Gas, Cast Iron); Salamander Heater & Blower Tender; Stonemason Tender
CLASS 2 - Bituminous Shoveler; Bottom Man (Sewer, Water or Gas Trench); Cement Coverman (Batch Trucks); Cement Handler (Bulk or Bag) Chain Saw Shoveler; Tamper & Puddler (Paving); Concrete Vibrator; Conduit Layers (w/o Wiring); Drill Runner (heavy, inc. Churn Drill) Dump (Wagon, Truck, Jackhammerman); Joint Sawyer, Kettlemen (Bituminous or Lead); Mortar Mixers; Paving Buster; Tunnel Laborer (Atphspheric.Pressure); Power Buggy Opr.
CLASS 3 - Bituminous Tamper
CLASS 4 - Bituminous Raker; Floater & Utility Man; Caisson Work; Coffersam
CLASS 5 - Nozzleman (Gunite)
CLASS 6 - Pipelayer (Sewer, Water & Gas) Laser Beam
CLASS 7 - Powderman - Tunnel Miner

DECISION NO. MA81-2042 MINN-11-LAB

LABORERS: Counties of Benton, and Stearns	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	9.35	.55	.50	.40	
CLASS 2	9.40	.55	.50	.40	
CLASS 3	9.45	.55	.50	.40	
CLASS 4	9.50	.55	.50	.40	
CLASS 5	9.60	.55	.50	.40	
CLASS 6	9.70	.55	.50	.40	
CLASS 7	9.75	.55	.50	.40	
CLASS 8	9.80	.55	.50	.40	

CLASS 1 - Bricklayer Tender; Carpenter; Drill Runner Helper; Laborers-Wrecking & demolition, Pipe-Handler (Water, Gas & Cast Iron); Salamander Heater & Blower Tender; Stonemasons Tenders; Unskilled Laborers
CLASS 2 - Form Setter (Municipal Type Curb & Sidewalk, Form Setter (Pavement); Coverman (Batch Trucks); Cement Handler (Bulk or Bag); Chain Saw Man; Compaction Equipment (Hand Operated); Concrete Mixer (1 bag); Concrete Shoveler Tamper & Puddler (Paving); Concrete Vibrator; Conduit Layers (w/o wiring); Drill Runner (wagon, truck, etc.); Jackahmmerman, Joint Sawyer; Kettleman (Bituminous or Lead); Mortar Mixers; Paving Buster; Power Buggy; Tunnel Labor (Atmospheric pressure)
CLASS 4 - Bituminous Raker, Floater & Utility Man; Caisson Work; Cofferdam
CLASS 5 - Leadman
CLASS 6 - Gunite
CLASS 7 - Pipelayer (Sewer, Water & Gas)
CLASS 8 - Powerman, Tunnel Minxer

DECISION NO. MN81-2042 MINN-13-LAB

LABORERS: Sibley County	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	8.70	.50	.15		
CLASS 2	8.80	.50	.15		
CLASS 3	8.85	.50	.15		
CLASS 4	8.94	.50	.15		
CLASS 5	9.05	.50	.15		
CLASS 6	9.10	.50	.15		
CLASS 7	9.15	.50	.15		
CLASS 8	9.20	.50	.15		

CLASS 1 - Unskilled Laborers; Bricklayer & Carpenter Tenders; Drill Runner Helpers; Laborers Wrecking & Demolition; Pipe Handler (Water, Gas, Cast Iron); Salamander Heater & Blower Tender; Stonemasons Tender
CLASS 2 - Bituminous Shoveler, Bottom Man (Sewer, Water or Gas Trench), Cement Coverman (Batch Trucks); Cement Handler (Bulk or Bag); Chain Saw Man; Compaction Equipment (hand operated), Concrete Mixer (1 bag); Concrete Shoveler; Tamper & Puddler (paving), Concrete Vibrator; Conduit Layers (w/o wiring); Drill Runner (Heavy, incl. Churn Driver); Dumper (wagon truck etc.); Jackhammerman, Joint Sawyer, Kettleman (Bituminous or Lead); Mortar Mixer; Paving Buster; Power Buggy; Tunnel Laborer (Atmospheric pressure)
CLASS 3 - Form Setters (Municipal type curb & Sidewalk) Form-setter (pavement)
CLASS 4 - Bituminous Tamper, Caisson Work & Cofferdam
CLASS 5 - Bituminous Raker, Floater & Utility Man; Leadman
CLASS 6 - Nozzleman (Gunite)
CLASS 7 - Pipelayer, (Sewer & Gas)
CLASS 8 - Powderman, Tunnel Miner

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MINN-14-LAB

LABORERS: Counties of Carlton, Cook, Lake, & St. Louis - South at T-55	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	9.68	.50	.45	.50	
CLASS II	9.78	.50	.45	.50	
CLASS III	9.93	.50	.45	.50	
CLASS IV	9.98	.50	.45	.50	
CLASS V	10.03	.50	.45	.50	
CLASS VI	10.08	.50	.45	.50	
CLASS VII	10.18	.50	.45	.50	
CLASS VIII	10.28	.50	.45	.50	

CLASS I - Unskilled Laborers; Laborers; Wrecking & Demolition; Bricklayer Tender; Drill Runner Helper; Pipehandler (water, gas, cast iron), Salamander Heater & Blower Tender; Carpenter Tender; Stonemasons Tender
CLASS II - Bituminous Shoveler; Bottom Man (sewer, water or gas trench), Cement Handler (bulk or bag); Chain Saw Man; Compaction Equipment (hand operated); Concrete Mixer Operator (1 bag); Concrete Shoveler; Tamper & Puddler (paving) Concrete Vibrator; Conduit Layers (w/or wiring); Dumper (wagon, truck, etc.), Formsetter (pavement); Jackhammer Man & Paving Buster, Kettleman (Bituminous or Lead), Mortar Mixer, Power Buggy; Joint Drawer; Tunnel Laborer (atmospheric pressure)
CLASS III - Bituminous Tamper; Cofferdam Work; Caisson Work
CLASS IV - Drill Runner (Heavy, including churn drill)
CLASS V - Bituminous Raker, Floater & Utility Man, Pipelayers (sewer, water, gas); Leadman (Gunite)
CLASS VI - Nozzleman
CLASS VII - Powderman
CLASS VIII - Tunnel Miner

DECISION NO. MN81-2042

MINN-7M-PEO

POWER EQUIPMENT OPERATORS: ZONE 1	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Counties of Anoka, Carver, Cook, Dakota, Hennepin, Lake, Ramsey, St. Louis, Scott & Washington, Sherburne County south of the northern boundary of T-33-N and east of the western boundary of R-27-W, Wright County east of an including Highway #25, Chisago Co. south of the northern boundary of T-34-N and that part consisting substantially of the cities of Thompson, Colquet, Scanlon & Carlton					
GROUP 1	14.22	.95	.60		.05
GROUP 2	14.22	.95	.60		.05
GROUP 3	13.76	.95	.60		.05
GROUP 4	13.61	.95	.60		.05
GROUP 5	13.51	.95	.60		.05
GROUP 6	11.97	.95	.60		.05
GROUP 7	11.32	.95	.60		.05

GROUP 1 - Helicopter Pilot
GROUP 2 - Crane with over 135' Boom, excluding Jib; Dragline and/or other similar Equipment w/Shovel Type Controls 3 cu. yds. & over Mfg. rates capacity
GROUP 3 - Cableway Op.; Concrete Mixer; Stationary Plant over 34E; Derrick; Dragline and/or similar equipment with Shovel Type Control up to 3 cu. yds. Mfg. rates capacity; Dredge Operator or Engineer; Dredge Oper. (power) & Yds. & over; Grader or Motor Patrol Finishing Earth & Bituminous Locomotive Crane Operator; Master Mechanic; Mixer (paving) Concrete Paving Op.; Road Mile., Op., incl. power Supply; Mucking Mach.; incl. Mucking Operations Conway or similar type; Refrigeration Plant Engineer; Tandem Scraper; Tractor Op., (Boom Type), Truck Crane Op.; Tugboat Op. 100 HP & over
GROUP 4 - Dual Tractor Op.; Elevating Grader Op.; Pumpcrete Op.; Scraper; Struck Capacity 32 cu. yds. & over; Self-Propelled; Travelling Soil Stabilizer

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POWER EQUIPMENT OPERATORS

(CONT'D)

GROUP 5 - Air Track Rock Drill; Asphalt Bituminous Stabilizer Plant Op.; Crushing Plant Op.; or Gravel Washing; Crushing and Screening Plant Op., Dope Machine; Drill Rigs; Heavy Rotary or Churn or Cable Drill; Engineer in charge of Plant requiring First Class License; Fork Lift or Lumber Stacker; Front End Loader Op.; Loader Op., over 1 cu.yds.; Hoist Engineer; Hydraulic Tree Plant; Launcherman; Locomotive, all types; Mechanic or Welder; Multiple Machines, such as Air Compressors; Welding Machine; Generators; Pump or Crane Oilers; Paving Breaker or Tamping Machines Op., (Power-driven-Mighty might or similar type; Pick-up Sweeper; 1 cu. yd. & over Hopper capacity; Pipeline Wrapping; Cleaning or Bending Machine Op.; Power Plant Engineer; Power actuated Horizontal Boring Mach.; over 6" Op.; Pugmill Op.; Roller, 8 tons & over; Rubber Tired Farm Tractor; Backhoe Att.; Sheep Foot Op.; Tie Tamper & Ballast Mach. Op.; Tractor Op.; over D2, TD6 or similar HP with Power Take-Off; Tractor Op., over 50 HP without take-off; Trenching Machine Op.; (sewer, water, gas); Turnapull Op.; (or similar type); Well Point Installation; Dismantling or Repair Mechanic

GROUP 6 - Compressor Op. 375 or over; Bituminous Spreader and Bituminous Finishing Machine Op.; Concrete Distr. & Spreader Op.; Finishing Machine Op., Longitudinal Float Op.; Joint Mach. Op.; Spray; Concrete Mixer Op. 14S and under; Concrete Op. (Multi. Blade), Curb Mach. Op.; Fine Grade Op.; Form Trench Digger; Front End Loader Op. (up to & incl. 1 cu. yd.); Grader Op. (motor patrol); Gunite Op.; Augars and Boring Mach. Op.; Power actuated Jacks Op.; Pump Op.; Roller Op.; Self Propelled Chip Spreader; Shouldering Mach. Op.; Stump Chipper Op.; Tractor Op.; (D2, TD6 or similar HP with power Take-Off)

GROUP 7 - Brakeman; Switchman; Conveyor Op.; Deckhand; Fireman; Tank Car Heater Op.; Gravel Screening Plant Op.; Grease Leverman; Mech. Helper; Mech. Space Heater; Oiler self-prop. Vib. Packor Op.; Sheep Foot Roller; Tractor Op. 50 HP or less w/o Power Take-off; Truck Crane Oiler

DECISION NO. MN81-2042 MINN-6-PEO

POWER EQUIPMENT OPERATORS:

ZONE 2	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Counties of Blue Earth, Carlton, Dodge, Fairbault, Fillmore, Freeborne, Goodhue, Houston, LeSueur, Mower, Olmsted, Steele, Wabasha, Waseca, Winona & Washington; The remainder of Chisago, Sherburne & Wright Cos.; Cass Co. South of the northern right of way of U. S.Highway 2 and East of the Western right of way of U. s. Hwy 371; that part of Crow Wing Co. East of Western right of way of U. S. Hwy 371; Benton Co. east of the western-Right-of-Way of U. S. Hwy. #10; and in Martin, Nicollet, Sibley Stearns Counties, East of the Western Right-of-Way of Minn. Hwy. #15. In every case the entire corporation limits of counties, towns & villages located on the boundaries described as highways shall be included in this area					

DECISION NO. MN81-2042

POWER EQUIPMENT OPERATORS (CONT'D) ZONE 2 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	13.88	.95	.60		.05
GROUP 2	13.88	.95	.60		.05
GROUP 3	13.42	.95	.60		.05
GROUP 4	13.28	.95	.60		.05
GROUP 5	13.17	.95	.60		.05
GROUP 6	11.64	.95	.60		.05
GROUP 7	10.99	.95	.60		.05

GROUP 1 - Helicopter Pilot
GROUP 2 - Crane with over 135' Boom, excluding Jib; Dragline and/or other similar Equipment w/Shovel Type Controls 3 cu. yds. & over Mfg. rates capacity
GROUP 3 - Cableway Op.; Concrete Mixer; Stationary Plant over 34E; Derrick; Dragline and/or similar equipment with Shovel Type Control up to 3 cu. yds. Mfg. rates capacity; Dredge Operator or Engineer; Dredge Oper. (power) & Yds. & over; Grader or Motor Patrol Finishing Earth & Bituminous Locomotive Crane Operator; Master Mechanic; Mixer (paving) Concrete Paving Op.; Road Mile., Op., incl. power Supply; Mucking Mach.; incl. Mucking Operations Conway or similar type; Refrigeration Plant Engineer; Tandem Scraper; Tractor Op., (Boom Type), Truck Crane Op.; Tugboat Op. 100 HP & over
GROUP 4 - Dual Tractor Op.; Elevating Grader Op.; Pumpcrete Op.; Scraper; Struck Capacity 32 cu. yds. & over; Self-Propelled; Travelling Soil Stabilizer
GROUP 5 - Air Track Rock Drill; Asphalt Bituminous Stabilizer Plant Op.; Crushing Plant Op.; or Gravel Washing; Crushing and Screening Plant Op., Dope Machine; Drill Rigs; Heavy Rotary or Churn or Cable Drill; Engineer in charge of Plant requiring First Class License; Fork Lift or Lumber Stacker; Front End Loader Op.; Loader Op., over 1 cu.yds.; Hoist Engineer; Hydraulic Tree Plant; Launcherman; Locomotive, all types; Mechanic or Welder; Multiple Machines, such as Air Compressors; Welding Machine; Generators; Pump or Crane Oilers; Paving Breaker or Tamping Machines Op., (Power-driven-Mighty might or similar type; Pick-up Sweeper; 1 cu. yd. & over Hopper capacity; Pipeline Wrapping; Cleaning or Bending Machine Op.; Power Plant Engineer; Power actuated Horizontal Boring Mach.; over 6" Op.; Pugmill Op.; Roller, 8 tons & over; Rubber Tired Farm Tractor; Backhoe Att.; Sheep Foot Op.; Tie Tamper & Ballast Mach. Op.; Tractor Op.; over D2, TD6 or similar HP with Power Take-Off; Tractor Op., over 50 HP without take-off; Trenching Machine Op.; (sewer, water, gas); Turnapull Op.; (or similar type); Well Point Installation; Dismantling or Repair Mechanic

DECISION NO. MN81-2042

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 6 - Compressor Op. 375 or over: Bituminous Spreader and Bituminous Finishing Machine Op.: Concrete Dist. & Spreader Op.; Finishing Machine Op., Longitudinal Float Op.; Joint Mach. Op.; Spray; Concrete Mixer Op. 14S and under; Concrete Op. (Multi. Blade), Curb Mach. Op.; Fine Grade Op.; Form Trench Digger; Front End Loader Op. (up to & incl. 1 cu. yd.); Grader Op. (motor patrol); Gunite Op.; Augars and Boring Mach. Op.; Power actuated Jacks Op.; Pump Op.; Roller Op.; Self Propelled Chip Spreader; Shouldering Mach. Op.; Stump Chipper Op.; Tractor Op.; (D2, TD6 or similar HP with power Take-Off)
GROUP 7 - Brakeman; Switchman; Conveyor Op.; Deckhand; Fireman; Tank Car Heater Op.; Gravel Screening Plant Op.; Grease Leverman; Mech. Helper; Mech. Space Heater; Oiler self-prop. Vib. Packor Op.; Sheep Foot Roller; Tractor Op. 50 HP or less w/o Power Take-off; Truck Crane Oiler

DECISION NO. MN81-2042 MINN-7-PEO

POWER EQUIPMENT OPERATORS: ZONE 3 The Remainder of Benton, Nicollet, Sibley & Stearns Counties:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	12.37	.95	.60		.05
GROUP 2	12.37	.95	.60		.05
GROUP 3	11.59	.95	.60		.05
GROUP 4	11.43	.95	.60		.05
GROUP 5	11.34	.95	.60		.05
GROUP 6	10.36	.95	.60		.05
GROUP 7	9.92	.95	.60		.05

CLASSIFICATIONS

GROUP 1 - Helicopter Pilot
GROUP 2 - Crane with over 135' Boom, excluding Jib; Dragline and/or other similar Equipment w/Shovel Type Controls 3 cu. yds. & over Mfg. rates capacity
GROUP 3 - Cableway Op.; Concrete Mixer; Stationary Plant over 34E; Derrick; Dragline and/or similar equipment with Shovel Type Control up to 3 cu. yds. Mfg. rates capacity; Dredge Operator or Engineer; Dredge Oper. (power) & Yds. & over; Grader or Motor Patrol Finishing Earth & Bituminous Locomotive Crane Operator; Master Mechanic; Mixer (paving) Concrete Paving Op.; Road Mile., Op., incl. power Supply; Mucking Mach.; incl. Mucking Operations Conway or similar type; Refrigeration Plant Engineer; Tandem Scraper; Tractor Op., (Boom Type), Truck Crane Op.; Tugboat Op. 100 HP & over
GROUP 4 - Dual Tractor Op.; Elevating Grader Op.; Pumpcrete Op.; Scraper; Struck Capacity 32 cu. yds. & over; Self-Propelled; Travelling Soil Stabilizer
GROUP 5 - Air Track Rock Drill; Asphalt Bituminous Stabilizer Plant Op.; Crushing Plant Op.; or Gravel Washing; Crushing and Screening Plant Op., Dope Machine; Drill Rigs; Heavy Rotary or Churn or Cable Drill; Engineer in charge of Plant requiring First Class License; Fork Lift or Lumber Stacker; Front End Loader Op.; Loader Op., over 1 cu.yds.; Hoist Engineer; Hydraulic Tree Plant; Launcherman; Locomotive, all types; Mechanic or Welder; Multiple Machines, such as Air Compressors; Welding Machine; Generators; Pump or Crane Oilers; Paving Breaker or Tamping Machines Op., (Power-driven-Mighty might or similar type; Pick-up Sweeper; 1 cu. yd. & over Hopper capacity; Pipeline Wrapping; Cleaning or Bending Machine Op.; Power Plant Engineer; Power actuated Horizontal Boring Mach.; over 6" Op.; Pugmill Op.; Roller, 8 tons & over; Rubber Tired Farm Tractor; Backhoe Att.; Sheep Foot Op.; Tie Tamper & Ballast Mach. Op.; Tractor Op.; over D2, TD6 or similar HP with Power Take-Off; Tractor Op., over 50 HP without take-off; Trenching Machine Op.; (sewer, water, gas); Turnapull Op.; (or similar type); Well Point Installation; Dismantling or Repair Mechanic

DECISION NO. MN81-2042

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 6 - Compressor Op. 375 or over; Bituminous Spreader and Bituminous Finishing Machine Op.: Concrete Dist. & Spreader Op.; Finishing Machine Op., Longitudinal Float Op.; Joint Mach. Op.; Spray; Concrete Mixer Op. 14S and under; Concrete Op. (Multi. Blade), Curb Mach. Op.; Fine Grade Op.; Form Trench Digger; Front End Loader Op. (up to & incl. 1 cu. yd.); Grader Op. (motor patrol); Gunite Op.; Augars and Boring Mach. Op.; Power actuated Jacks Op.; Pump Op.; Roller Op.; Self Propelled Chip Spreader; Shouldering Mach. Op.; Stump Chipper Op.; Tractor Op.; (D2, TD6 or similar HP with power Take-Off)
GROUP 7 - Brakeman; Switchman; Conveyor Op.; Deckhand; Fireman; Tank Car Heater Op.; Gravel Screening Plant Op.; Grease Leverman; Mech. Helper; Mech. Space Heater; Oiler self-prop. Vib. Packor Op.; Sheep Foot Roller; Tractor Op. 50 HP or less w/o Power Take-off; Truck Crane Oiler

DECISION NO. MN81-2042

MINN-55-TD

TRUCK DRIVERS Area 3 Southeastern Area C Counties of Dodge, Fillmore, Freeborn, Goodhue, Mower, Olmsted, Rice, Steele, Wabasha, & Winona Cos.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	10.85	.65	.65		
GROUP 2	10.40	.65	.65		
GROUP 3	10.30	.65	.65		
GROUP 4	10.10	.65	.65		

CLASSIFICATIONS

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches); Truck Train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-Axle (including 4-Axles); Dump Dry Batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; Slurry Driver

GROUP 3 - Bituminous Distributor; (1-Man Operation); Tandem Axle

GROUP 4 - Bituminous Distributor Spray (rear-end oil); Dumpman; Greaser & Truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman, Tractor Operator (Wheel type used for any purpose) Pilot Car Driver, Self-Propelled Packer; Slurry Operator; Single Axle Trucks.

DECISION NO. MN81-2042

MINN-7-TD

TRUCK DRIVERS: Area 4 Mankato Area COUNTIES OF: Blue Earth, LeSueur, Nicollet, and Waseca	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	10.32	.65	.65		
GROUP 2	9.87	.65	.65		
GROUP 3	9.77	.65	.65		
GROUP 4	9.57	.65	.65		

CLASSIFICATIONS

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches); Truck Train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-Axle (including 4-Axles); Dump Dry Batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; Slurry Driver

GROUP 3 - Bituminous Distributor; (1-Man Operation); Tandem Axle

GROUP 4 - Bituminous Distributor Spray (rear-end oil); Dumpman; Greaser & Truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman, Tractor Operator (Wheel type used for any purpose) Pilot Car Driver, Self-Propelled Packer; Slurry Operator; Single Axle Trucks.

DECISION NO. MN81-2042

MINN-5-TD

TRUCK DRIVERS - Area 5 Western Area Counties of Benton, Fairbault, LeSueur, Sibley, Stearns, Remainder of Chisago	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	9.72	.65	.65		
GROUP 2	9.27	.65	.65		
GROUP 3	9.17	.65	.65		
GROUP 4	8.97	.65	.65		

CLASSIFICATIONS

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches); Truck Train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-Axle (including 4-Axles); Dump Dry Batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; Slurry Driver

GROUP 3 - Bituminous Distributor; (1-Man Operation); Tandem Axle

GROUP 4 - Bituminous Distributor Spray (rear-end oil); Dumpman; Greaser & Truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman, Tractor Operator (Wheel type used for any purpose) Pilot Car Driver, Self-Propelled Packer; Slurry Operator; Single Axle Trucks.

DECISION NO. MN81-2042

MINN-62-TD

TRUCK DRIVERS: Area 1 and 2 Twin City & Duluth Metro Area Counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington, Wright, Sherburne, Chisago South of T-34-N, Carlton, Cook, Lake, St. Louis	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	10.90	.65	.65		
GROUP 2	10.45	.65	.65		
GROUP 3	10.35	.65	.65		
GROUP 4	10.15	.65	.65		

CLASSIFICATIONS

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches); Truck Train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-Axle (including 4-Axles); Dump Dry Batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; Slurry Driver

GROUP 3 - Bituminous Distributor; (1-Man Operation); Tandem Axle

GROUP 4 - Bituminous Distributor Spray (rear-end oil); Dumpman; Greaser & Truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman, Tractor Operator (Wheel type used for any purpose) Pilot Car Driver, Self-Propelled Packer; Slurry Operator; Single Axle Trucks.

SUPERSEDEAS DECISION

STATE: Missouri COUNTIES: Jasper, McDonald and Newton

DECISION NO.: MO81-4062 DATE: Date of Publication

Supersedes Decision No. MO79-4081 dated September 7, 1979 in 44 FR 52555

DESCRIPTION OF WORK: Building Projects, (excluding single family homes and apartments up to including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$14.07	.50	1.25		.04
BOILERMAKERS	14.97	1.375	1.15		.05
BRICKLAYERS & STONEMASONS	11.85	.60	.85		
CARPENTERS:					
Carpenters & lathers	10.38	.60	.50		
Millwrights & Piledrivermen	10.63	.60	.50		
ELECTRICIANS:					
Electricians	11.56	.65	3%+.75	5%	.01
Cable splicers	11.91	.65	3%+.75	5%	.01
ELEVATOR CONSTRUCTORS:					
Elevator constructors	14.135	1.195	.95	8%+a	.025
Helpers	70%JR	1.195	.95	8%+a	.025
GLAZIERS	11.84			.25	
IRONWORKERS	13.35	.80	1.15		.12
LABORERS:					
Group 1	8.40	.60	.60		.10
Group 2	8.65	.60	.60		.10
Group 3	8.80	.60	.60		.10

LABORERS CLASSIFICATION DEFINITIONS:

Group 1 - General laborers, carpenter tenders, trackmen, wreckers, handling and carrying of reinforced steel

Group 2 - Pipelayers, (conduit pipe, sewer tile, drain tile, duct line w. mains), air tool operators, pier hole diggers (over 10'), vibrators, jackhammer, chipping hammer operator (air or electric), asphalt rakers, mastic kettlemen, sandblasting, gunnite nozzlemen, cutting torch & welders, barco, jackson or similar tamp operators, powderman

Group 3 - Plasterers and mason tenders

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Lineman	$15.05	.45	3%+.25		½%
Linemen Operators	14.34	.45	3%+.25		½%
Groundman	9.63	.45	3%+.25		½%
Groundman, Powderman	10.43	.45	3%+.25		½%
PAINTERS:					
Brush, roller, tapers, floor tile & carpet layers, Paperhangers	10.82		.50		
Spray	11.32		.50		
PLUMBERS	11.875	.90	.85		.08
POWER EQUIPMENT OPERATORS:					
Group 1	12.38	.60	1.25		
Group 2	11.90	.60	1.25		
Group 3	11.30	.60	1.25		
Group 4	10.70	.60	1.25		

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

Group 1 - Crane; dragline; derrick; drum or tower hoist (2-drum); power shovel or back hoe (on tracks); piledriver; power blade, motor patrol; mechanic; hydraulic, self-propelled crane; stringer or cherry picker crane

Group 2 - Bulldozer; dirt scoop or pan; elevating grader; drum or tower hoist (1 drum); loader (track or rubber tire); tractor, pusher, roller (asphalt); tractor or back hoe (on rubber tires); tractor (compaction roller or pull blade track)

Group 3 - Fork lift; roller; industrial tractor; tractor (compaction roller or pull blade-rubber tire); distributor (bituminous); finishing machine (concrete paving); concrete saw (self-propelled air compressor (600 cu. ft. or over); small machine (operator)

Group 4 - Oiler, oiler-driver

FOOTNOTES:

a - Employer contributes 8% of basic hourly rate for over 5 years service and 6% of basic hourly rate for 6 months to 5 years as Vacation Pay credit, also 7 Paid Holidays.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Missouri

COUNTIES: Franklin, Jefferson, Lincoln, St. Charles, Warren, & City & County of St. Louis

DECISION NO. MO81-4057

DATE: Date of Publication

Supersedes Decision No. MO79-4093 dated November 23, 1979 in 44 FR 67308

DESCRIPTION OF WORK: Residential Projects, consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$15.49	1.00	1.26		
BRICKLAYERS; STONEMASONS	13.35	.72	.95	.70	.01
CARPENTERS:					
Zone I - St. Louis City & County	14.46	.90	.95		.18
Zone II - St. Charles County	11.35	.65	.70		
Zone III - Lincoln & Warren Counties	10.65	.65	.70		
Zone IV - Jefferson County	14.46	.90	.95		.15
Zone V - Franklin County	10.35	.70	.80		
ELECTRICIANS:					
Zone I City & County of St. Louis & St. Charles County	14.79	.91	3%+5½%	15½%	.12
Zone II - Franklin, Jefferson, Lincoln & Warren Counties where the electrical contracts exceeds $15,000.00	14.79	.91	3%+5½%	15½%	.12
Zone III - Franklin, Jefferson, Lincoln, & Warren Counties where the electrical contracts does not exceed $15,000.00	13.84	.91	3%+5½%	15½%	.12
ELEVATOR CONSTRUCTORS	11.80	.895	.69	3%+a	.025
ELEVATOR CONSTRUCTORS HELPERS	70%JR	.895	.69	3%+a	.025

FOOTNOTES:

a - Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years as Vacation Pay Credit, also 7 Paid Holidays.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GLAZIERS	$13.68	1.34	2.10	13.2%	.05
IRONWORKERS	13.475	.65	1.05		.09
LABORERS:					
ZONE I - St. Louis City & County					
Laborers General	11.175	.65	1.05		
Laborer, site improvement	11.175	.65	1.05		
Plumber, laborer	12.85	.65	1.05		
ZONE II - Lincoln & Warren Counties	11.325	.60	.70		
ZONE III - Jefferson County:					
Laborer, General	11.70	.60	.60		.10
Powderman, Mason Tender; Plaster tender; Grade Checker; and pipelayer	12.20	.60	.60		.10
ZONE IV - Franklin, County:					
Contracts less than $500,000.00:					
General Labor	10.75	.60	.50		
Mason tenders, plumber laborer, Plaster tender	10.95	.60	.50		
Contracts $500,000.00 or over:					
General Labor	12.25	.60	.50		
Mason tenders, plumber laborer, plaster tender	12.45	.60	.50		
ZONE V - St. Charles County:					
Laborers	11.825	.60	.70		
LATHERS	11.955	.57	.55		½ of 1%
MARBLE SETTERS	12.31	.85	1.305		
MARBLE FINISHERS	12.65				
PAINTERS:					
ZONE I - Franklin, Jefferson, St. Charles, Warren Counties & City & County of St. Louis:					
Brush	12.99	.68	.37	.80	.15
Spray	14.99	.68	.37	.80	.15
ZONE II - Lincoln County:					
Brush	6.20				
Spray	6.70				
PIPEFITTERS (Franklin, Jefferson, St. Charles, St. Louis & Warren Cos.	15.45	2.435	1.64		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PIPEFITTERS & PLUMBERS (Lincoln County)	$ 14.05	2.435	1.64		
PLASTERERS	12.755	.78	.80		.04
PLUMBERS (Franklin, Jefferson St. Charles, St. Louis & Warren Counties	14.005	.90	1.10	.90	.20
POWER EQUIPMENT OPERATORS:					
GROUP I	14.32	1.05	1.25		.20
GROUP II	13.02	1.05	1.25		.20
GROUP III	12.57	1.05	1.25		.20
GROUP IV:					
(a)	15.02	1.05	1.25		.20
(b)	15.87	1.05	1.25		.20
(c)	16.32	1.05	1.25		.20
(d)	17.07	1.05	1.25		.20
(e)	14.82	1.05	1.25		.20

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS

GROUP I - Backhoe; cableway; crane, crawler or truck; crane, hydraulic-truck or cruiser mounted-16 tons & over; crane, locomotive; derrick, steam; derrick car & derrick boat; dragline; dredge; gradeall, crawler or tire mounted; locomotive gas, steam & other power; pile driver, land or floating; scoop, skimmer; shovel, power (steam, gas electric or other powers); switch boat; whirley; air tugger w/air compressor; anchor placing barge; asphalt spreader; athey force feeder loader (self-propelled); back-filling machine; boat operator-push boat or tow boat (job site); boiler, high pressure breaking in period; boom truck, placing or erecting; boring machine, footing foundation; bullfloat; cherry picker, combination concrete hoist & mixer such as mixer-mobile; compressors, two, not more than 50 ft. apart; compressor-welder combination; concrete breaker (truck or tractor mounted); concrete pump, such as pumpcrete machine; concrete spreader; conveyor, large (not-self-propelled) hoisting or moving brick and concrete into, or into and on floor level, one or both; crane, hydraulic-rough terrain, self-propelled; crane hydraulic-truck or cruiser mounted-under 16 tons; drilling machines, self-powered, used for earth or rock drilling or boring (wagon drills and any hand drills obtaining power from other sources including concrete breakers, jack-hammers and barco equipment); elevating greader; engine man, dredge; excavator or powerbelt machine; finishing machine, self-propelled oscillating screed; forklift;

CLASSIFICATION DEFINITIONS CONTD

POWER EQUIPMENT OPERATORS (GROUP I CONT'D)

grader, road with power blade; highlift; hoist, concrete and brick (brick cages on concrete skips operating in or on tower, towermobile, or similar equipment); hoist, stack; hydro-hammer; lad-a-vator, hoisting brick or concrete; loading machine (such as barber-greene); mixer-mobile, mucking machine, pipe cleaning machine; pipe wrapping machine; plant, asphalt; plant, concrete producing or ready-mix-job site; plant, heating-job-site; plant mixing job site; plant, power generating-job site; pumps, two self-powered, over 2" through 6" pumps, electric submersible, one through three, over 4" quad-track; roller, asphalt, top or subgrade; scoop tractor drawn; spreader box; subgrader; tie tamper; tractor-crawler, or wheel type with or without power unit, power take-offs, and attachments regardless of size; trenching machine, tunnel boring machine; vibrating machine, automatic, automatic propelled; welding machines (gasoline or diesel) more than one but not over four (regardless of size); well drilling machine; mechanic on job site; mixer, paving; compressor (when operator run throttle); compressor-generator combination; compressor-pump combination; generator two 30 KW or over, or any number developing over 30 KW; generator pump combination

Group II - Air tugger w/plant air; boiler, for power or heating on construction projects; boiler, temporary ; compressor, air-one; compressor, air (mounted on truck); concrete saw, self-propelled; conveyor, large (not self-propelled); conveyor, large (not-self-propelled) moving brick and concrete (distributing) on floor level, curb finishing machine; ditch paving machine; elevator (building construction or alteration); endless chain hoist; fireman; form grader; generator, one over 30 KW or any number developing over 30 KW; greaser; hoist, one drum regardless of size (except brick or concrete); lad-a-vator, other hoisting; manlift; mixer, asphalt, over 8 cu. ft. capacity; mixer, if two or more mixers of one bag capacity or less are used by one employer on job, an operator is required; mixer, without side loader, 2 bag capacity or more; mixer with side loader, regardless of size, not paver; oiler on dredge; oiler on truck crane, pug mill operator; pump, sump-self-powered, automatic controller over 2" during use in connection with construction work; sweeper, street; welding machine, one over 400 amp.; winch operating from truck; scissor lift (used for hoisting); curb finishing machine, tractor, small wheel type 50 h.p. & under with grader, blade and similar equipment

Group III - Boat-operator-outboard motor (job-site); conveyor (such as con-vay-it), regardless of how used; oiler; sweeper, floor.

CLASSIFICATION DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATOR

Group IV - (a)Air pressure; oiler engineer operating under ten pounds. (b)Air pressure, oiler engineer operating over ten pounds. (c)Air pressure engineer operating under ten pounds. (d)Air pressure engineer operating over ten pounds. (e)Crane-pile driving and extracting; crane using rock socket tool; dragline-7 cu. yds. & over; shovel, power-7 cu. yds. and over, crane, climbing (such as linden), derrick, diesel, gas or electric hoisting material and erecting steel 150' or more above ground, hoist, three or more drums; scoop, tandem; tractor, tandem crawler. Crane, with boom (including jib) over 100' from pin to pin (add 1¢ per foot to maximum of 1,00) above basic rate for cranes.

Work in tunnel or tunnel shaft, 50¢ above base rate.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Composition; slate & tile	$13.85	.92	.85		.03
SHEET METAL WORKERS	14.03	.87	.96	1.13	.06
SPRINKLER FITTERS	15.96	.85	1.20		.12
TERRAZZO WORKERS	16.05				
TILE SETTERS	12.18	.85	1.305		
TILE WORKER FINISHER	11.70	.85	.755		

WELDERS - receive rate prescribed for craft performing operation to which is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Missouri COUNTIES: Pettis and Saline
DECISION NO.: MO81-4058 DATE: Date of Publication
Supersedes Decision No. MO80-4093 dated November 28, 1980 in 45 FR 79282
DESCRIPTION OF WORK: Building projects, (excluding single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$14.62	1.05	1.75		.06
BOILERMAKERS	14.97	1.375	1.15		.05
BRICKLAYERS, Stonemasons, tile layers	12.80		.35		
CARPENTERS (Pettis County):					
Carpenters & lathers	11.85	.53	.30		.08
Millwrights	12.35	.53	.30		.08
Piledrivers	11.975	.53	.30		.08
CARPENTERS (Saline County):					
Carpenter	12.95	.65	.75		.07
Millwrights, lathers & piledrivermen	14.05	.65	.75		.07
CEMENT MASONS	12.83				
ELECTRICIANS (Pettis County):					
Contracts not exceeding 2000 man hours	13.68	.69	3%+.90	7%.95	.12
Contracts exceeding 2000 man hours	14.68	.69	3%+.90	7%.95	.12
ELECTRICIANS (Saline County):					
Contracts not exceeding 2000 man hours	13.08	.69	3%+.90	7%.95	.12
Contracts exceeding 2000 man hours	14.68	.69	3%+.90	7%.95	.12
ELEVATOR CONSTRUCTORS:					
Elevator Constructors	14.135	1.195	.95	8%+a	
Elevator Constructors' helpers	70%JR	1.195	.95	8%+a	
GLAZIERS	12.35	.90	1.19	17.14%	.05
IRONWORKERS	13.85	.80	1.50	1.00	.05
PAINTERS:					
Brush	12.25				
Spray; Sandblasting	13.25				
Machine taping; outside work on swing stages, window jacks, with belts or boatswain's chair	12.75				
PIPEFITTERS	14.54	.72	1.60		.10
PLASTERERS	12.51				
PLUMBERS	14.52	1.12	1.20		.12
ROOFERS	13.05	.75	.75		.14

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS	$14.04	.75	1.32		.17
MARBLE & TILE SETTERS	13.90	5%	5%		
TILE SETTERS FINISHERS	13.20				
TERRAZZO WORKERS	14.31	5%	4.25%		
TERRAZZO FINISHERS	11.76				
TERRAZZO BASE MACHINE OP.	12.11				
LABORERS (Pettis County):					
GROUP 1	9.525	.60	.80		.10
GROUP 2	9.625	.60	.80		.10
GROUP 3	9.85	.60	.80		.10

LABORERS CLASSIFICATION DEFINITIONS

GROUP 1 - Carpenter tenders; track men; wreckers (alterations or entire project); reinforcing rod carriers; all other general laborers

GROUP 2 - Plumber laborers; stonemasons tenders; air tool operators; sewer work; water lines; conduit pipe; drain tile & duct lines; batter board man or pipe & ditch work; pier hole men working below ground; vibrator man; scaleman; jackhammer; chipping hammer operators; material batch hopper man; spreader or screed man on asphalt machine; brush feeders on pulverizers; swinging scaffold; cement handlers (bulk or sack); laser beam man; chain or concrete saw

GROUP 3 - Plaster tenders; hod carriers; brick tenders; cutting torch & burner men; asphalt rakers; barco tamper; jackson or any similar tamps; power buggy operator; powderman; mastic kettlemen; sandblasting & gunnite nozzleman; head pipe layer on sewer work; men working in tunnels; head form setters & stringline men; hot tar applicator

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (Saline County):					
GROUP 1	$11.20	.60	.60		.10
GROUP 2	11.35	.60	.60		.10
GROUP 3	11.50	.60	.60		.10

LABORERS CLASSIFICATION DEFINITIONS

GROUP 1 - Common labor; wire mesh handlers or setters, carpenter tender; trackmen; flagmen; signalmen; salamander tenders; floor cleaners; landscape men; sod layers; wreckers (for alteration or entire projects

GROUP 2 - Plumber laborers (conduit pipe, sewer work , drain tile & duct lines, digging & back filling); power tool operators; pier hold diggers (over 10 ft.); vibrator, jackhammer & chipping hammer operators; chain saw operators, concrete saw operators; brush feeders on pulverizers; reinforcing steel handlers; air tamp operators; ditch witch operators; swinging scaffolds; cutting torch or burner men; georgia buggies (self-propelled); fork lift, boseman; insulation men

GROUP 3 - Fork lift (masonry); brick tenders; plasterer tenders; stone mason tenders; barco, Jackson or similar tamp operators; asphalt raker; powdermen; mastic hot kettlemen; sandblasting & gunite nozzle men; wagon & churn drill operators

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Building Construction					
GROUP I	$14.11	1.00	1.25	1.05	.20
GROUP II	13.76	1.00	1.25	1.05	.20
GROUP III:					
(a)	9.80	1.00	1.25	1.05	.20
(b)	11.86	1.00	1.25	1.05	.20
(c)	11.00	1.00	1.25	1.05	.20
(d)	12.11	1.00	1.25	1.05	.20
GROUP IV	14.36	1.00	1.25	1.05	.20
GROUP V	14.01	1.00	1.25	1.05	.20
GROUP VI	14.61	1.00	1.25	1.05	.20
GROUP VII:					
(a)	13.86	1.00	1.25	1.05	.20
(b)	13.61	1.00	1.25	1.05	.20
(c)	11.61	1.00	1.25	1.05	.20
GROUP VIII	15.11	1.00	1.25	1.05	.20
GROUP IX	14.61	1.00	1.25	1.05	.20

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CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS

GROUP I - Asphalt paver and spreader; asphalt plant mixer operator; asphalt plant operator; back fillers; backhoe; barber-greene loader; blade-power; boats-power; boilers (2); boring machines; cableways; cherry pickers; chip spreader; concrete ready-mixed plant, portable (job site); concrete mixer paver; crane-overhead; crusher, rock; derricks and derricks cars (power operated); ditching machines; dozers; dredges - any type power; grade-all - similar type; hoist, endless chain-power operated with power travel; loaders; mechanic and welder; mucking machine; orange peels; pumps - material; push cats; scoops; self-propelled rotary drill; shovel, power; side boom; skimmer scoop; testhole machine; throttle man

GROUP II - Boilers (1); Brooms - power operated; chip spreader (front man); clef plane operator; compressors (1) 125' or over; concrete saws, self-propelled); crab - power operated; curb finishing machine; firemen on rigs; flex plane; floating machine; form grader; greaser; hoist, endless chain - power operated; hopper - power operated; hydra hammer; lad-a-vator - similar type; rollers; siphons, jets, and jennies; sub-grader; tractors over 50 h.p.; compressors (2) 125' ft. or over not more than 20' apart; compressors-tandem; compressors single, truck mounted; elevator; finishing machine

GROUP III:
(a) Oilers
(b) Fork lift-masonry
(c) Oiler driver
(d) A-frame trucks; fork lift-all types (except masonry); mixers (w/side loaders); pumps (w/well points) dewatering systems, test or pressure pumps; tractors (except when hauling material) less than 50 h. p.

GROUP IV
Clamshells, 80 ft. of boom or over (inc. jib); crane or rigs, 80 ft. of boom or over (inc. jib); draglines, 80 ft. of boom or over (inc. jib); pile drivers, 80 ft. of boom or over (incl. jib)

GROUP V
Hoists-each additional drum over 1 drum

GROUP VI
Crane or rigs, over 200 ft. of boom

GROUP VII
Ready Mixed Concrete Plants:
(a) Crane operator
(b) Loader operator & plant man
(c) Conveyor operator

GROUP VIII
Master Mechanic

GROUP IX
Crane-tower or climbing

Unlisted classification needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii))

SUPERSEDEAS DECISION

STATE: Missouri COUNTY: Greene
DECISION NO.: MO81-4059 DATE: Date of Publication
Supersedeas Decision No. MO80-4095 dated Dec. 12, 1980 in 45 FR 81975
DESCRIPTION OF WORK: Building projects, (excluding single family, homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$14.07	.50	1.25		.04
BOILERMAKERS	14.97	1.375	1.15		.05
BRICKLAYERS, Stonemasons & tuck pointers	12.67	.60	.50		.05
CARPENTERS:					
Carpenters	12.38	.60	.50		
Millwrights & piledrivermen	12.63	.60	.50		
CEMENT MASONS	11.75				
ELECTRICIANS:					
Electricians	13.40	.47	3%+1.00	6%	.02
Cable splicers	13.80	.47	3%+1.00	6%	.02
ELEVATOR CONSTRUCTORS:					
Elevator Constructors	14.135	1.195	.95	8%+a	
Elevator Constructors' helper	70%JR	1.195	.95	8%+a	
GLAZIERS:					
Outside	10.00				
Inside	7.38				
IRONWORKERS	13.735	.80	1.50	1.00	.05
LATHERS	11.45				
MARBLE MASONS, Tile layers & terrazzo workers	12.17	.60	.50		
PAINTERS:					
Brush, roller & tapers	9.90	.50			
Spray, sandblasting, paperhangers, hazardous materials, elevator shafts	10.40	.50			
PLASTERERS	11.75				.03
PLUMBERS & PIPEFITTERS	14.34	.35	.25		
ROOFERS	7.90	.46	.20		
SHEET METAL WORKERS	9.75	.83	.55		.04
LABORERS:					
GROUP 1	9.60	.60	.60		.10
GROUP 2	9.88	.60	.60		.10
GROUP 3	10.03	.60	.60		.10
GROUP 4	10.20	.60	.60		.10
TILE FINISHERS	10.10				
TERRAZZO WORKERS FINISHERS:					
TERRAZZO FINISHERS	11.76				
BASE MACHINE OPERATOR	12.11				

LABORERS CLASSIFICATION DEFINITIONS

GROUP 1 - Common labor, handling and carrying of reinforcing steel pumps of all types and heaters
GROUP 2 - Asphalt raker, crusher feederman, cement finisher tender, jackhammer and air tool operator, power tamper operator, pipe layer (concrete or clay), sand blast and gunnite nozzlemen, vibrator operator, wagon drill operator, cat-drill operator, and all work of a semi-skilled nature not listed
GROUP 3 - Mason tenders: Including plasterer tender, mortar mixer and fork lift operator
GROUP 4 - Powderman

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
GROUP 1	$12.38	.60	1.25		
GROUP 2	11.90	.60	1.25		
GROUP 3	11.30	.60	1.25		
GROUP 4	10.70	.60	1.25		

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Crane, dragline; derrick; drum or tower hoist (2 drum); power shovel or back hoe (on tracks); piledriver; power blade, motor patrol; mechanic; hydraulic, self-propelled crane, stringer or cherry picker crane
GROUP 2 - Bulldozer; dirt scoop or pan; elevating grader; drum or tower hoist (1-drum); loader (track or rubber tire); tractor pusher; roller (asphalt); tractor or backhoe (on rubber tires); tractor (compaction roller or pull blade track)
GROUP 3 - Fork lift; roller; tractor (compaction roller or pull blade-rubber tire); distributor, (bituminous); finishing machine (concrete paving); concrete saw (self-propelled); air compressor (600 cu. ft. or over)
GROUP 4 - Oiler, oiler-driver

FOOTNOTE: a - Employer contributes 8% of basic hourly rate for over 5 years' service, and 6% of basic hourly rate for 6 months to 5 years Vacation Pay Credit, also 7 Paid Holidays.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)".

SUPERSEDEAS DECISION

STATE: Missouri COUNTY: Cole
DECISION No. MO 81-4063 DATE: Date of Publication
Supersedes Decision No. MO80-4096 dated December 12, 1980 in 45 FR 81976
DESCRIPTION OF WORK: Building projects, (excluding single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$15.49	1.00	1.26		
BOILERMAKERS	15.12	1.375	1.15		.05
BRICKLAYERS, STONEMASONS, TILE LAYERS	12.69		.35		
CARPENTERS:					
Carpenters & lathers	12.45	.53	.40		.08
Millwrights	13.20	.53	.40		.08
Piledrivers	12.85	.53	.40		.08
CEMENT MASONS	13.45	.53	.40		
ELECTRICIANS:					
Electricians	13.90	.54	3%+1.00	7%+.30	.01
Cable Splicers	14.15	.54	3%+1.00	7%+.30	.01
ELEVATOR CONSTRUCTORS:					
Elevator Constructors	11.80	.895	.69	3%+a	.025
Elevator constructors' Helpers	70%JR	.895	.69	3%+a	.025
LABORERS:					
General Laborer; Watchman; Flagmen, Heaters; Material Plant Man; Carpenter Tender; Landscaper; Signalman; wrecker (old/new structures); Form Handler; Post Hole Digger; Cleaning & clearing of all debris for all crafts; Loading & unloading, conveying, distributing, collecting & hoisiting of construction material & debris; Backfilling, grading & landscaping; Covering of tanks, structures & material piles with tarpaulins or other materials; Handling & cleaning of concrete chutes; Cleaning of concrete spills & chipping where hand tools are required; Cleaning of masonry & other type walls & windows; signal & hoisting concrete buckets;					

DECISION NO. MO81-4063

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Rodman; All tools run by gas, electricity, or air except vibrator, jack-hammer & paving breaker; air compressors; motor buggies; pumps, except set-up men & nozzle men; unloading & handling steel; Chipping tool operator; concrete mixer operator	$10.65	.60	.50		
First Semi-Skill Brick mason, plasterer & cement finishers tenders; mortarmen; Scaffold builders for brick, plasterer & cement masons; forklifts (walk-behind, or other similar types)	10.90	.60	.50		
Second semi- skill Concrete pumps set-up men & nozzle men; Tile Layers, Bottom men, Sewers & Drains; Cutting Torch; Burning Bar; Trench or pier holes 12'or over; Wagon Drill; Air Track or any Mechanical Drill; Power Man; Tamper 100 lbs. or over; Paving breaker; Jackhammer & Vibrator; Laser Beam Man for Sewer; Grade Checker	11.00	.60	.50		
IRONWORKERS	13.475	.65	1.05		.06
PAINTERS: Brush	11.70		.20		
Spray; Structural Steel; Stage or saddle; blasting	12.20		.20		
PIPEFITTERS	15.45	2.435	1.64		
PLASTERERS	12.90				
PLUMBERS	14.005	.90	1.10	.90	.20

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Group I Backhoe, Cableway; Crane, Crawler or truck; Crane, hydraulic truck or cruiser mounted 16 tons & over; Crane, locomotive, Derrick, steam; derrick car & derrick boat; Dragline; Dredge; Gradall, crawler or tire mounted; locomotive, gas, steam & other powers; Piledriver, land or floating; scoop, skimmer; shovel, power (steam, gas, electric or other powers); Switch boat; whriley	$14.32	1.05	1.25		.20
Group II Air tugger w/air compressor; Anchor placing barge; Asphalt spreader; Athey force feeder loader (self-propelled); Backfilling machine; Boat oper. push boat or tow boat (job site); Boiler, high pressure breaking in period; Boom truck, placing or erecting; Boring machine, footing foundation; Bullfloat; Cherry picker; combination concrete hoist & mixer such as mixermobile; Compressor (when operator runs throttle); Compressors, two not more than 50' apart; Compressor-generator combination; Compressor Pump Combination; Compressor Welder Combination; Concrete breaker (truck or Tractor mounted); Concrete pump,					

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OEPRATOR GROUP II CONT'D such as pumpcrete machine; Concrete Spreader; Conveyor, large (not self-propelled) hoisting or moving Brick & concrete into, or into & on floor level, one or both; Crane, hydraulic rough terrain, self-propelled; Crane, hydraulic truck or cruiser mounted under 16 tons; drilling machines, self-powered, used for earth or rock drilling or Boring (wagon drills & any hand-drills obtaining power from other sources including concrete breakers, jackhammers & Barco equipment no engineer required); Elevating grader, engine man, dredge; Excavator or Powerbelt machine; Finishing machine, self-propelled oscillating screed; Fork lift; Grader road with power blade; Highlift; hoist, concrete & brick (brick cages or concrete skips operating in or on tower, tower-mobile, or similar equipment); Hoist, stack; Hydrohammer; Lada-vator, hoisting brick or concrete; Loading machine (such as Barber-Greene); Mechanic, on job site; Mixer, paving; Mixer-mobile; Mucking machine; Pipe wrapping machine; Plant, asphlat; Plant, concrete producing or ready-mix job site; Plant heatING job site; Plant, mixing job site; Plant, power, generating job site;					

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
pumps, two self-power over 2" through 6"; Pumps, electric submersible, one through three, over 4" quad-Track; Roller, Asphalt, Top or subgrade; Scoop, tractor drawn; Spreader box; Subgrader; Tie Tamper; Tractor-crawler, or wheel type with or without power unit, power take off, & attachments regardless of size; Trenching machine, tunnel boring machine, vibrating machine, automatic, propelled; Welding machines (gasoline or diesel) more than one but not over four (regardless of size); Well drilling machines	$14.32	1.05	1.25		.20
Group III Air tugger w/plant air; boiler, for power or heating shell of buildings or temporary enclosures in connection with construction work; boiler, temporary; Compressor, air one; Compressor, air (mounted on truck); concrete Saw, (self-propelled); Conveyor, large (not self propelled); Conveyor, large (not self-propelled) moving brick & concrete (distributing) on floor level; curb finishing machine, ditch paving machine; Elevator (building construction or alteration); Endless chain hoist; Fireman; Form grader; Generator, one over 30 KW or any number developing over 30Kw;					

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POWER EQUIPMENT OPERATORS (GROUP III CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
greaser; Hoist, one drum regardless of size (except brick or concrete); lad-a-vator; Manlift; Mixer, asphalt, over 8 cu. ft. capacity; Mixer, if two or more of one bag capacity or less are used by one Employer on job, an operator is required; Mixer, without side loader 2 bag capacity or more; Mixers, with side loader, 2 bag capacity or more mixer, with side loader, regardless of size, not paver; Oiler on dredge; Oiler on truck crane; Pug mill operator; Pump; Sump-self powered, automatic controlled over 2" during use in connection with construction work; Scissor lift (used for hoisting); Sweeper, street; Tractor small wheel type 50 h.p. & under with grader blade & similar equipment; Welding machine, one over 400 amp.; Winch operating from truck; Mechanic in shop	$13.07	1.05	1.25		.20
Group IV					
Boat operator outboard motor (job site); Conveyors, (such as conway-it)regardless of how used; Oiler; Sweeper, floor	12.62	1.05	1.25		.20
GROUP V					
(a) Air pressure; Oiler engineer operating under ten pounds	15.02	1.05	1.25		.20

POWER EQUIPMENT OPERATORS (GROUP V CONT'd).	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
(b) Air-pressure, oiler engineer operating over ten pounds	$15.87	1.05	1.25		.20
(c) Air-pressure engineer operating under ten pounds	16.32	1.05	1.25		.20
(d) Air-pressure oiler engineer operating over ten pounds	17.07	1.05	1.25		.20
(e) Crane, climbing (such as linden); Crane, pile driving & extracting; crane, using rock socket tool; Derrick; diesel, gas or electric, hoisting material erecting steel (150' or more above ground); dragline, 7 cu. yds. & over; Hoist, three or more drums in use; scoop, tandem; shovel, power 7 cu. yds. & over; tractor, tandem crawler tunnel man assigned to work in tunnel or tunnel shaft; Wrecking, when machine is working on Second or higher; Crane-booms (including jib) 100 ft. to 150 ft.	14.82	1.05	1.25		.20
Crane, boom (including jib) 150 ft. to 200 ft.	15.32	1.05	1.25		.20
Crane, boom (including jib) 200 ft. to 250 ft.	15.82	1.05	1.25		.20
Crane, boom (including jib) 250 ft. to 300 ft.	16.32	1.05	1.25		.20
ROOFERS:					
Roofers	11.20		.35	.30	
Roofers in coal tar pitch	11.70		.35	.30	
SHEET METAL WORKERS	12.86	.50	.36		.05
TRUCK DRIVERS:					
Warehousemen; Dumper; Flat bed & pick-up; Farm tractor; Water truck, Single-axle; Fuel truck, Single axle	10.20	.75	1.00	d	

TRUCK DRIVERS(CONT'D).	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Tandem; Tractor trailer; Winch; Fork Lift; Tandem water truck; Tandem Fuel truck	$10.60	.75	1.00	d	
Tandem-slip-bed operation pitman; hydro broom truck; Transit mixer; Euclid; Belly Dump; Cat Wagon; Oil Distributor; Ross Carrier; Dumpster; Half track; Water pull; Mechanic	10.90	.75	1.00	d	
SPRINKLER FITTERS	14.20	.85	1.20		.08

FOOTNOTES:

FOOTNOTES:
a - Employer contributes 8% of basic hourly rate for over 5 years service and 6% of basic hourly rate for 6 months to 5 years as Vacation Pay Credit, also 7 Paid Holidays.

d - After 1 year a weeks vacation

Unlisted classifications needed for wokr not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Missouri COUNTIES: Boone, Cooper, and Howard

DECISION NO. MO81-4061 DATE: Date of Publication

Supersedes Decision NO. MO81-4020 dated March 27, 1981, in 46 FR 19169

DESCRIPTION OF WORK: Building projects (excluding single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$14.62	1.05	1.75		.06
BOILERMAKERS	14.97	1.375	1.15		.05
BRICKLAYERS; STONEMASONS & TILE LAYERS	12.80		.35		
CARPENTERS:					
Carpenters & lathers	12.35	.53	.30		.08
Millwrights	13.00	.53	.30		.08
Piledrivers	12.75	.53	.30		.08
CEMENT MASONS	13.45				
ELECTRICIANS:					
Boone & Howard Counties:					
Electricians	13.90	.54	3%+ 1.00	7%+.30	.01
Cable Splicers	14.15	.54	3%+ 1.00	7%+.30	.01
Cooper County:					
Electricians (contracts exceeding 2000 man hours	14.68	.69	3%+.90	7%	.12
Electricians (contracts not exceeding 2000 man hours)	13.08	.69	3%+.90	7%	.12
ELEVATOR CONSTRUCTORS:					
Cooper & Howard Counties					
Elevator Constructors	14.135	1.195	.95	3%+a	.025
Elevator Constructors helpers	70%	1.195	.95	3%+a	.025
Boone County					
Elevator Constructors	11.80	.895	.69	3%+a	.025
Elevator Constructors helpers	70%JR	.895	.69	3%+a	.025
GLAZIERS:					
Cooper & Howard Counties	17.35	.90	1.19	17.14%	.05
IRONWORKERS:					
Cooper & Howard Counties	13.65	.80	1.50	1.00	.05
Boone County	13.475	.65	1.05		.06
LABORERS:					
General Laborer; Watchman; Flagmen; Heaters; Material Plant Man; Carpenter Tender; Landscaper; Signalman; Wrecker (old/new structures); Form Handler; Post hole Diggers; Cleaning & clearing of all debris for all crafts;					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONTD.)					
Loading & unloading, conveying, distributing, collecting & hoisting of construction material & debris Backfilling, grading & landscaping; covering of tanks, structures & material piles with tarpaulins or other materials; Handling & cleaning of concrete chutes; Cleaning of concrete spills & chipping where hand tools are required; cleaning of masonry & other type walls & windows; signal & hoisting concrete buckets; rodman; all tools run by gas, electricity, or air except vibrator, jackhammer & paving breaker; air compressors; motor buggies; pumps, except set-up men & nozzle men; unloading & handling steel; chipping tool operator; concrete mixer operator	$10.65	.60	.50		
First Semi-skill Brickmason, plasterer & cement finishers tenders; mortarmen; scaffold builders for brick; plasterer & cement masons; forklifts (walk-behind, or other similar types)	10.90	.60	.50		
Second Semi-Skill Concrete pumps set-up men & nozzle men; tile layers, bottom men, sewers & drains; cutting torch; burning bar; trench or pier holes 12' or over; wagon drill; air track or any mechanical drill; powder man; tamper, 100 lbs. or over; paving breaker; jackhammer & vibrator; laser beam man for sewer; grade checker for roads & railroads	$11.00	.60	.50		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONTD.)					
LINE CONSTRUCTION:					
Line Man & Cable Splicers	13.78	.50	7%	12½%	½%
Groundman, Winch Drivers	10.11	.50	7%	12½%	½%
Groundman Driver	9.75	.50	7%	12½%	½%
Equipment Operators	12.32	.50	7%	12½%	½%
Groundman	9.75	.50	7%	12½%	½%
PAINTERS:					
Boone & Howard County:					
Brush	11.70		.20		
Spray, Structural Steel, Sandblasting	12.20		.20		
Cooper County:					
Brush	12.25				
Spray	13.25				
PLASTERERS	12.95				
PLUMBERS & PIPEFITTERS	14.13	.62	.75		.05
POWER EQUIPMENT OPERATORS:					
Cooper & Howard Counties:					
(Zone 1)					
GROUP I	14.11	1.00	1.25	1.05	.15
GROUP II	13.76	1.00	1.25	1.05	.15
GROUP III:					
(a)	9.80	1.00	1.25	1.05	.15
(b)	11.86	1.00	1.25	1.05	.15
(c)	11.00	1.00	1.25	1.05	.15
(d)	12.11	1.00	1.25	1.05	.15
GROUP IV	14.36	1.00	1.25	1.05	.15
GROUP V	14.01	1.00	1.25	1.05	.15
GROUP VI	14.61	1.00	1.25	1.05	.15
GROUP VII:					
(a)	13.86	1.00	1.25	1.05	.15
(b)	13.61	1.00	1.25	1.05	.15
(c)	11.61	1.00	1.25	1.05	.15
GROUP VIII	15.11	1.00	1.25	1.05	.15
GROUP IX	14.61	1.00	1.25	1.05	.15

POWER EQUIPMENT OPERATORS
(CONTD.)

Group I - Asphalt paver and spreader; asphalt plant mixer op.; asphalt plant operator; back fillers; backhoe; barber-greene loader; blade-power; boats-power; boilers (2); boring machines; cableways; cherry pickers; chip spreader; concrete ready-mixed plant, portable (job site); concrete mixer paver; crane-overhead; crusher, rock; derricks and derricks cars (power operated); ditching machines; dozers; dredges - any type power; grade-all - similar type; hoist, endless chain-power operated with power travel; loaders; mechanic and welder; mucking machine; orange peels; pumps - material; push cats; scoops; self-propelled rotary drill; shovel, power; side boom; skimmer scoop; testhole machine; throttle man

Group II - Boilers (1); Brooms - power operated; chip spreader (front man); clef plane operator; compressors (1) 125' or over; concrete saws, self-propelled); crab power operated; curb finishing machine; fireman on rigs; flex plane; floating machine; form grader; greaser; hoist, endless chain - power operated; hopper - power operated; hydra hammer; lad-a-vator - similar type; rollers; siphons, jets, and jennies, sub-grader; tractors over 50 h. p.; compressors (2) 125' or over not more than 20' apart, compressors-tandem; compressors single, truck mounted; elevator; finishing machine

GROUP III:
(a) Oilers
(b) Fork lift-masonry
(c) Oiler driver
(d) A-frame trucks; fork lift-all types (except masonry); mixers (w/side loaders); pumps (w/well points) dewatering systems, test or pressure pumps; tractors (except when hauling material) less than 50 h.p.

Group IV
Clamshells, 80 ft. of boom or over (incl. jib); crane or rigs, 80 ft. of boom or over (incl. jib); draglines, 80 ft. of boom or over (incl. jib); pile drivers, 80 ft. of boom or over (incl. jib)

Group V
Hoists-each additional drum over 1 drum

Group VI
Crane or rigs over 200 ft. of boom

Group VII
Ready Mixed Concrete Plants;
(a) Crane operator
(b) Loader operator & plant man
(c) Conveyor operator

Group VIII
Master Mechanic

Group IX
Crane-tower or climbing

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: Boone County:					
Group I					
Backhoe, cableway; crane, crawler or truck; crane, hydraulic truck or cruiser mounted 16 tons & over; crane, locomotive, derrick, steam; derrick car & derrick boat; dragline; dredge; gradall, crawler or tire mounted; loccomotive, gas, steam & other power; piledriver, land or floating; scoop skimmer; shovel, power (steam, gas, electric or other powers); swith boats whirley	$14.32	1.05	1.25		.20
Group II					
Air tugger w/air compressor; anchor placing barge; asphalt spreader; Athey force feeder loader (self-propelled); backfilling machine; boat op.; push boat or tow boat (job site); boiler, high pressure breaking in period; boom truck, placing or erecting; boring machine; footing foundation; bull-float; cherry picker; combination concrete hoist & mixer such as mixermobile; compressor (when operator runs throttle); compressors, two not more than 50' apart; compressor generator combination; compressor pump combination; compressor welder combination; concrete breaker (truck or					

POWER EQUIPMENT OPERATORS (GROUP II CONTD.):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
tractor mounted); concrete pump, such as pumpcrete machine; concrete spreader; conveyor, large (not self-propelled) hoisting or moving brick & concrete into, or into & on floor level, one or both; crane, hydraulic rough terrain, self-propelled; crane, hydraulic truck or cruiser mounted under 16 tons; drilling machines, self-powered, used for earth or rock drilling or boring (wagdon drills & any hand-drills obtaining power from other sources including concrete breakers, jackhammers & Barco Equipment no engineer required); elevating grader, engine man, dredge; excavator or powerbelt machine; finishing machine, selfpropelled oscillating screed; fork lift; grader road with power blade; highlift; hoist, concrete & brick (brick cages or concrete skips operating in or on tower, towermobile, or similar equipment; hoist, stack; hydrohammer; lad-a-vator, hoisting brick or concrete; loading machine (such as Barber-Greene); mechanic, on job site; mixer, paving; mixer-mobile; mucking machine; pipe wrapping machine; plant, asphalt; plant, concrete producing or ready-mix job site;					

POWER EQUIPMENT OPERATORS (GROUP II CONTD.)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
plant, heating job site; plant, mixing job site; plant, power generating job site; pumps, two self-power over 2" through 6"; pumps, electric submersible, one through three, over 4"; quad-Track; roller, asphalt, top or subgrader; scoop, tractor drawn; spreader box; subgrader; tie tamper; tractor-crawler, or wheel type with or without power unit, power take offs, & attachments regardless of size; trenching machine, tunnel boring machine, vibrating machine, automatic, propelled; welding machines (gasoline or diesel) more than one but not over four (regardless of size); well drilling machine	$14.32	1.05	1.25		.20
Group III					
Air tugger w/plant air; boiler for power or heating shell of buildings or temporary enclosures in connection with construction work; Boiler, temporary; compressor, air one; compressor, air (mounted on truck); concrete saw, (self-propelled);					
conveyor, large (not self-propelled); conveyor, large (not self-propelled moving brick & concrete distributing) on floor level; curb finishing machine, ditch paving machine; elevator (build-					

POWER EQUIPMENT OPERATORS (GROUP III CONTD.)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ing construction or alteration); endless chain hoist; fireman; form grader; generator, one over 30kw or any number developing over 30kw; greaser; hoist, one drum regardless of size (except brick or concrete); lad-a-vator; manlift; mixer, asphalt, over 8 cu. ft. capacity; mixer, if two or more mixers of one bag capacity or less are used by one Employer on job, an operator is required; mixer, without side loader 2 bag capacity or more; mixers, with side loader, 2 bag capacity or more mixer, with side loader, regardless of size, not paver; oiler on dredge; oiler on truck crane; pug mill operator; pump, sump-self powered, automatic controlled over 2" during use in connection with construction work; scissor lift (used for hoisting); sweeper, street tractor small wheel type 50 h.p. & under with grader blade & similar equipment; welding machine, one over 400 amp.; winch operating from truck; mechanic in shop	$13.07	1.05	1.25		.20
Group IV					
Boat operator outboard motor (job site); conveyors, (such as conway-it) regardless of how used; oiler; sweeper, floor	12.62	1.05	1.25		.20

POWER EQUIPMENT OPERATORS (GROUP V CONTD.)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group V					
(a) Air-pressure; oiler engineer operating under ten pounds	$15.02	1.05	1.25		.20
(b) Air-pressure, oiler engineer operating over ten pounds	15.87	1.05	1.25		.20
(c) Air-pressure engineer operating under ten pounds	16.32	1.05	1.25		.20
(d) Air-pressure oiler engineer operating over ten pounds	17.07	1.05	1.25		.20
(e) Crane, climbing (such as linden); crane, pile driving & extracting; crane, using rock socket tool; derrick, diesel, gas or electric, hoisting material erecting steel (150' or more above ground); dragline, 7 cu. yds. & over; hoist, three or more drums in use; scoop, tandem; shovel, power 7 cu. yds. & over; tractor, tandem crawler tunnel man assigned to work in tunnel or tunnel shaft; wrecking, when machine is working on second or higher; crane-booms (including jib) 100 ft. to 150 ft.	14.82	1.05	1.25		.20
Crane, boom (including jib) 150 ft. to 200 ft.	15.32	1.05	1.25		.20
Crane, boom (including jib) 200 ft. to 250 ft.	15.82	1.05	1.25		.20
Crane, boom (including jib) 250 ft. to 300 ft.	16.32	1.05	1.25		.20
ROOFERS:					
Roofers	11.20		.35	.30	
Roofers in Coal Tar Pitch	11.70		.35	.30	
SHEET METAL WORKERS:					
Boone & Cooper Counties	12.86	.50	.36		.05
Howard County	15.42	.75	1.44		.17
SPRINKLER FITTERS	15.95	.85	1.20		.12

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Truck Drivers (Boone County): Warehouseman; dump truck; flat bed; pick-up; farm tractor; single-axle water truck; fuel truck-single axle	$11.205	.75	.50	b	
Tandem; tractor-trailer; winch truck; forklift; tandem water truck; tandem fuel truck	11.355	.75	.50	b	
Pitman; hydro boom truck; tandem-slip bed operation; transit mixer; euclid; belly dump; cat wagon; mechanic; oil distributor; water pull; ross carrier; dumpster; halftruck	11.855	.75	.50	b	

FOOTNOTES:

a - Employer contributes 8% of basic hourly rate for over 5 years service and 6% of basic hourly rate for 6 months to 5 years as Vacation Pay Credit, also 7 Paid Holidays.

b - After 1 year a weeks vacation

Unlisted classifications needed for wokr not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

[FR Doc. 81-21953 Filed 7-23-81; 8:45 am]
BILLING CODE 4510-27-C

SUPERSEDEAS DECISION

STATE: TENNESSEE COUNTIES: *See Below
DECISON NUMBER: TN81-1272 DATE: Date of Publication
Supersedes Decision Numbers TN80-1054 dated February 8, 1980 in 45 FR 8867; and TN81-1261 dated July 6, 1981 in 46 FR 35028.
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS (includes single family homes and apartments up to and including four (4) stories.)

*Anderson, Blount, Cocke, Grainger, Hamblen, Knox, Jefferson, Loudon, Roane and Sevier Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING & HEATING MECHANICS	$5.69				
BRICKLAYERS	8.29				
CARPENTERS	6.19				
CEMENT MASONS	7.31				
DRYWALL FINISHERS	6.00				
DRYWALL HANGERS	7.00				
ELECTRICIANS	6.41				
INSULATION INSTALLERS	5.25				
LABORERS:					
Unskilled	4.14				
Asphalt Rakers	4.75				
Mason Tender	6.00				
Mortar Mixer	5.00				
PAINTERS	8.58				
PLUMBERS & PIPEFITTERS	6.00				
ROOFERS	6.38				
SHEET METAL WORKERS	5.49				
TRUCK DRIVERS	4.89				
POWER EQUIPMENT OPERATORS:					
Backhoe	6.00				
Bulldozer	6.00				
Concrete Rubber	4.18				
Curb Machine	4.50				
Fork Lift	5.21				
Grader	6.00				
High Lift	6.00				
Loader	6.97				
Motor Patrol	6.17				
Paver	5.66				
Pan/Scraper	5.50				
Roller	5.50				
WELDER - Rate for Craft					
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).					

federal register

Friday
July 24, 1981

Part III

Department of Health and Human Services

Office of the Secretary
Office of Family Assistance
Office of Child Support Enforcement
Office of Human Development Services
Health Care Financing Administration

Equipment Acquired Under Public Assistance Programs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Family Assistance

Office of Child Support Enforcement

Office of Human Development Services

45 CFR Parts 95, 205, 304, 1392, 1393, and 1396

Equipment Acquired Under Public Assistance Programs

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of proposed rule making.

SUMMARY: This proposed rule would revise and consolidate current HHS regulations concerning Federal financial participation in the cost of equipment under HHS supported public assistance programs. The proposed rule would also revise and consolidate current regulations on the management and disposition of equipment under these programs.

The proposed rule would permit State public assistance agencies to expense most of their equipment at the time of purchase rather than depreciating the equipment over its useful life as required by the current regulations. This change would allow these agencies to claim Federal financial participation in the cost of the equipment at an earlier date than under the current regulations and would simplify the accounting requirements associated with the equipment.

Because of the long-term nature of the programs involved, the total Federal reimbursement under either the proposed rule or the current regulation would be approximately the same. Accordingly, we are proposing this simplified rule since there is no apparent benefit to the Federal Government or State agencies from the use of the more complicated current requirements.

DATE: Comments must be received on or before September 22, 1981.

ADDRESS: Interested parties are invited to submit written data, views, or comments on 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 533H, 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: Edward M. Tracy (202) 755–7633.

SUPPLEMENTARY INFORMATION: This proposed rule would revise and consolidate regulations currently found in the following sections: 45 CFR 95.641, 205.160, 304.24, 1392.66, 1393.92, 1396.93 and 42 CFR 433.35 concerning Federal financial participation in the cost of equipment under HHS supported public assistance programs and the management and disposition of equipment whose costs are charged to these programs. The regulations implementing the new Title IV–E to the Social Security Act, Federal Payments for Foster Care and Adoption Assistance, will include this provision when the regulations are published in final. The proposed rule would:

(a) Allow a State agency to expense an item of equipment having an acquistion cost of $25,000 or less, except under specified circumstances;

(b) Eliminate the multiple capitalization levels prescribed in the current regulations;

(c) Clarify the circumstances under which equipment would be subject to the property rules in Subpart O of 45 CFR Part 74;

(d) Establish requirements concerning the management and disposition of equipment which is not subject to Subpart O of 45 CFR Part 74; and

(e) Clarify the relationship between Subpart F (Automatic Data Processing Equipment and services) of 45 CFR Part 95 and the new subpart G of Part 95 being proposed today.

The proposed rule would permit State public assistance agencies to expense most of their equipment at the time of purchase rather than depreciating the equipment over its useful life as required by the current regulations. This change would allow these agencies to claim Federal financial participation in the cost of the equipment at an earlier date than under the current regulations and would simplify the accounting requirements associated with the equipment. The proposed $25,000 capitalization level is designed to remove the vast majority of equipment purchases from the depreciation requirement. Because of the long-term nature of the programs involved, the total Federal reimbursement under either the proposed rule or the current regulation would be approximately the same. Accordingly, we are proposing this simplified rule since there is no apparent benefit to the Federal Government or State agencies from the use of the more complicated current requirements.

The definitions and terminology contained in the proposed rule are consistent with the Department's general rules contained in Subpart O of 45 CFR Part 74. The proposed rule eliminates the references found in current regulations (45 CFR 205.160, 304.24 and 42 CFR 433.35) to the "book value" and "amount expended" as the basis for computing the acquisition cost of a piece of replacement equipment by making the definition of acquistion cost consistent with that found in Subpart O.

The Department has determined that this is not a major rule as defined in Executive Order 12291. Pursuant to the provisions of 5 U.S.C. Section 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Dated: July 1, 1981.

Richard S. Schweiker,

Secretary of Health and Human Services.

Accordingly, it is proposed to amend 45 CFR Subtitle A and chapters II, III, and XIII as follows:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

A. 45 CFR 205.160 is revised to read as follows:

§ 205.160 Equipment—Federal financial participation.

Claims for Federal financial participation in the cost of equipment for the cash assistance programs under Titles I, IV–A, X, XIV, XVI (AABD) and for the separate administrative unit established under Section 402(a)(19)(G) of the Social Security Act are to be determined in accordance with Subpart G of 45 CFR Part 95. Requirements concerning the management and disposition of equipment under these Titles are also prescribed in Subpart G of 45 CFR Part 95.

PART 304—FEDERAL FINANCIAL PARTICIPATION

B. 45 CFR 304.24 is revised to read as follows:

§ 304.24 Equipment—Federal financial participation.

Claims for Federal financial participation in the cost of equipment under the Child Support Enforcement Program are to be determined in accordance with Subpart G of 45 CFR Part 95. Requirements concerning the management and disposition of equipment under the Child Support

Enforcement Program are also prescribed in Subpart G of 45 CFR Part 95.

PART 1392—SERVICE PROGRAM FOR FAMILIES AND CHILDREN; TITLE IV: PARTS A AND B OF SOCIAL SECURITY ACT

C. 45 CFR 1392.66 for the Title IV–B Child Welfare Services Program and the Title IV–A Services Program in the Territories is revised to read as follows:

§ 1392.66 Equipment—Federal financial participation.

Claims for Federal financial participation in the cost of equipment under the Child Welfare Services Program and the Services Program in the Territories are to be determined in accordance with Subpart G of 45 CFR Part 95. Requirements concerning the management and disposition of equipment under the these programs are also prescribed in Subpart G of 45 CFR Part 95.

PART 1393—SERVICE PROGRAMS FOR AGED, BLIND, OR DISABLED PERSONS: TITLES I, X, XIV, AND XVI (AABD) OF THE SOCIAL SECURITY ACT

D. 45 CFR 1393.92 for the Services Programs under Titles I, X, XIV and XVI (AABD) in the Territories is revised to read as follows:

1393.92 § Equipment—Federal financial participation.

Claims for Federal financial participation in the cost of equipment for the Services Programs under Titles I, X, XIV and XVI (AABD) in the Territories are to be determined in accordance with Subpart G of 45 CFR Part 95. Requirements concerning the management and disposition of equipment under these programs are also prescribed in Subpart G of 45 CFR Part 95.

PART 1396—SOCIAL SERVICES PROGRAMS FOR INDIVIDUAIS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT

E. 45 CFR 1396.93 for the Title XX, Social Services Program is revised to read as follows:

§ 1393.93 Equipment—Federal financial participation.

Claims for Federal financial participation in the cost of equipment for the Social Services Program under Title XX are to be determined in accordance with Subpart G of 45 CFR Part 95. Requirements concerning the management and disposition of equipment under this program are also prescribed in Subpart G of 45 CFR Part 95.

PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS (PUBLIC ASSISTANCE AND MEDICAL ASSISTANCE)

F. 45 CFR 95.641 is revised to read as follows:

§ 95.641 Exemption from Subpart G of this part.

The capitalization and depreciation provisions of Subpart G of this Part do not apply to ADP equipment provided the Department approves the ADP equipment purchase and approves the expensing of the equipment. The equipment management and equipment disposition provisions of Subpart G of this Part do apply to ADP equipment.

G. 45 CFR Part 95 is amended by adding a new Subpart G to read as follows:

Subpart G—Equipment Acquired Under Public Assistance Programs

Sec.

95.701 Purpose and scope of subpart.
95.703 Definitions.
95.705 Equipment costs—Federal financial participation.
95.707 Equipment management and disposition.

Authority: Sec. 1102,49 Stat. 647, 42 U.S.C. 1302.

Subpart G—Equipment Acquired Under Public Assistance Programs.

§ 95.701 Purpose and scope of subpart.

(a) This subpart prescribes requirements concerning the computation of claims for Federal financial participation in the cost of equipment under public assistance programs. This subpart also prescribes requirements for the managment and disposition of equipment whose costs are claimed for Federal financial participation under these programs.

(b) This subpart applies to equipment purchased by State agencies (as defined in § 95.703) and to equipment purchased under service agreements with other State agencies and under cost-type contracts.

§ 95.703 Definitions.

As used in this subpart: "Acquisition cost" of an item of purchased equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective intransit insurance shall be included in or excluded from the unit acquisition cost in accordance with the regular accounting practices of the organization purchasing the equipment. If the item is acquired by trading in another item and paying an additional amount, "acquisition cost" means the amount received for trade-in plus the additional outlay.

"Equipment" means an article of tangible personal property that has a useful life of more than two years and an acquisition cost of $500 or more. Any recipient may use its own definition of equipment, if its definition would at least include all items of equipment as defined here.

"Public Assistance Programs" means programs authorized by Titles I, IV–A, IV–B, IV–C, IV–D, IV–E, X, XIV, XVI (AABD), XIX and XX of the Social Security Act, and programs authorized by the Immigration and Nationality Act as amended by the Refugee Act of 1980 (Pub. L. 96–212).

"State Agency" means the State agency administering a public assistance program(s). This term includes local government public assistance agencies which administer public assistance programs under a State supervised system and the State agencies which supervise the local agencies.

§ 95.705 Equipment costs—Federal financial participation.

(a) *General rule.* In computing claims for Federal financial participation, equipment having a unit acquisition cost of $25,000 or less may be expensed or depreciated, at the option of the State agency. Equipment having a unit acquisition cost of more than $25,000 shall be depreciated. For purposes of this section, the term "depreciate" also includes use allowances computed in accordance with the cost principles precribed in Subpart Q of 45 CFR Part 74.

(b) *Exceptions.* (1) Equipment purchased under service agreements with other State agencies and under cost-type contracts shall be depreciated. However, equipment having a unit acquisition cost of $25,000 or less may be expensed if (a) the State agency approved the expensing of the item, and (b) the contract or service agreement requires that the equipment or its residual value be transferred to the State agency when the equipment is no longer needed to carry out the work under the contract or service agreement.

(2) ADP equipment having an acquisition cost in excess of $25,000 may be expensed if expensing of the

equipment is approved under Subpart F of this Part.

§ 95.707 Equipment management and disposition.

(a) An item of equipment is subject to the property rules in Subpart O of 45 CFR Part 74 if the item was expensed and if the total cost of the item was claimed and accepted for Federal financial participation as a direct cost under a single program or program activity. These rules also apply to ADP equipment where the State agency was permitted to expense the equipment under Subpart F of this Part.

(b) Other items of equipment whose costs are claimed for Federal financial participation (i.e., equipment that is capitalized and depreciated or is expensed and charged to more than one program) are not subject to the specific requirements in Subpart O of 45 CFR Part 74. However, the State agency is responsible for adequately managing the equipment, maintaining records on the equipment, and taking periodic physical inventories. Physical inventories may be made on the basis of statistical sampling. The following requirements apply to the disposition of this equipment:

(1) If the equipment was expensed and is later sold, the proceeds of the sale shall be credited to current expenditures in approximate proportion to the distribution of the equipment's costs.

(2) If the equipment was expensed and is later transferred to an activity which is not involved in the performance of programs currently or previously funded by the Federal Government, an amount equal to the fair market value of the Equipment on the date of the transfer shall be credited to current expenditures in approximate proportion to the distribution of the equipment's costs.

(3) If the equipment was expensed and is later traded in on other equipment, claims for Federal financial participation in the costs of replacement equipment shall be limited to the additional outlay.

(4) If the equipment was depreciated, any gain or loss on the disposition of the equipment shall be treated as a decrease or an increase to the depreciation expense of the period in which the disposition takes place. This provision does not apply to equipment whose costs were claimed for Federal financial participation through use allowances.

[FR Doc. 81-21761 Filed 7-23-81; 8:45 am]
BILLING CODE 4110-12-M

Health Care Financing Administration

42 CFR Part 433

Equipment Acquired Under Public Assistance Programs

AGENCY: Health Care Financing Administration, Department of Health and Human Services (HHS).

ACTION: Notice of proposed rule making.

SUMMARY: This proposed rule would revise current regulations concerning Federal financial participation in the cost of equipment under the Medicaid Program (Title XIX of the Social Security Act). The proposed rule would also revise current regulations on the management and disposition of equipment under the Program.

The proposed rule would permit State public assistance agencies to expense most of their equipment at the time of purchase rather than depreciating the equipment over its useful life as required by the current regulations. This change would allow these agencies to claim Federal financial participation in the cost of the equipment at an earlier date than under the current regulations and would simplify the accounting requirements associated with the equipment.

Because of the long-term nature of the programs involved, the total Federal reimbursement under either the proposed rule or the current regulation would be approximately the same. Accordingly, we are proposing this simplified rule since there is no apparent benefit to the Federal Government or State agencies from the use of the more complicated current requirements.

DATE: Comments must be received on or before September 22, 1981.

ADDRESS: Interested parties are invited to submit written data, views, or comments on 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 553H, 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: Edward M. Tracy (202) 755-7633.

SUPPLEMENTARY INFORMATION: By concurrent notice published also in Part III of this issue of the **Federal Register**, HHS is proposing to revise and consolidate its current regulations concerning Federal financial participation in the cost of equipment under public assistance programs supported by the Department. The proposed rule would also revise and consolidate current regulations on the management and disposition of equipment under these programs. Supplementary information on the proposed rule is provided in the concurrent Notice.

The Department has determined that this is not a major rule as defined in Executive Order 12291. Pursuant to the provisions of 5 USC Section 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Dated: July 2, 1981.

Richard S. Schweiker,

Secretary of Health and Human Services.

Accordingly, it is proposed to amend 42 CFR Part 433 as follows:

PART 433—STATE FISCAL ADMINISTRATION

42 CFR 433.35 is revised to read as follows:

§ 433.35 Equipment—Federal financial participation.

Claims for Federal financial participation in the cost of equipment under the Medicaid Program are determined in accordance with Subpart G of 45 CFR Part 95. Requirements concerning the management and disposition of equipment under the Medicaid Program are also prescribed in Subpart G of 45 CFR Part 95.

[FR Doc. 81-21762 Filed 7-23-81; 8:45 am]
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federal register

Friday
July 24, 1981

Part IV

Department of Health and Human Services

Public Health Service
Food and Drug Administration

[Docket No. 75F-0355]

Aspartame; Commissioner's Final Decision

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Food and Drug Administration

[Docket No. 75F-0355]

Aspartame: Commissioner's Final Decision

AGENCY: Food and Drug Administration.

ACTION: Notice; final decision following a hearing before a public board of inquiry.

SUMMARY: The Commissioner of Food and Drugs is issuing his Final Decision concerning the food additive petition for the nutritive sweetener aspartame submitted by G. D. Searle & Co. The Commissioner has determined that aspartame has been shown to be safe for its proposed uses as a food additive and is approving the petition. Specifically, the Commissioner finds that the available data establish that there is a reasonable certainty that human consumption of aspartame: (1) At projected consumption levels, will not pose a risk of brain damage resulting in mental retardation, endocrine disfunction, or both; and (2) will not cause brain tumors. Accordingly, the Initial Decision of the Public Board of Inquiry is affirmed in part and reversed in part, as modified and supplemented herein.

EFFECTIVE DATE: October 22, 1981.

ADDRESS: The transcript of the hearing, evidence submitted, and all other documents listed in this decision may be seen in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ted Herman, Regulations Policy Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: The purpose of this proceeding has been to decide whether aspartame has been shown to be safe under section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348).

I. Introduction

A. The Product

Aspartame [L-aspartyl-L-phenylalanine methyl ester] is a dipeptide composed primarily of two amino acids, phenylalanine and aspartic acid. These, along with other amino acids, are normal constituents of protein foods consumed as part of any healthful diet. When phenylalanine and aspartic acid are combined in a certain way to form aspartame, they produce an intensely sweet tasting substance, approximately 180 times as sweet as sucrose. Accordingly, as a sugar substitute, the amount of aspartame needed to produce the same degree of sweetness is substantially reduced, as will be the resulting calories.

Aspartame does break down spontaneously to diketopiperazine (DKP). If present in large amounts, DKP can make aspartame lose its sweetness. Under the uses approved in this decision, however, DKP normally comprises less than 2% of the final aspartame product which does not detract from the product's sweet tastes.

B. Historical Chronology

1. *Initial FDA Approval.* Aspartame was discovered and formulated by G. D. Searle & Co. (Searle), Skokie, Ill. As the law requires for all food additives, Searle petitioned the Food and Drug Administration (FDA) for approval to market aspartame as a sweetening agent in certain foods (38 FR 5921, March 5, 1973). Searle's petition contained voluminous amounts of data purporting to establish the safety of aspartame.

On July 26, 1974, FDA approved Searle's petition and issued a regulation authorizing the use of aspartame in certain foods and for certain technological purposes (39 FR 27317; correction notice, 39 FR 34520, Sept. 26, 1974). That regulation became codified in 21 CFR 172.804. Aspartame was specifically approved for use as a sweetener in the following foods:

a. Dry, free-flowing sugar substitutes for table use (not to include use in cooking) in package units, not to exceed the sweetening equivalent of 2 teaspoonfuls of sugar.

b. Sugar substitute tablets for sweetening hot beverages, including coffee and tea.

c. Cold breakfast cereals.

d. Chewing gum.

e. Dry bases for: (i) Beverages; (ii) instant coffee and tea; (iii) gelatins, puddings and fillings; and (iv) dairy products and toppings. In chewing gum, aspartame was also approved for use as a flavor enhancer in addition to use as a sweetener.

This approval had three conditions regarding final product labeling. First, the label of any food containing aspartame was required to bear the following statement:

"PHENYLKETONURICS: CONTAINS PHENYLALANINE." This requirement was designed to alert persons who, because of specific health reasons, need to restrict carefully their phenylalanine intake (just as diabetics need to restrict their sugar intake). The second condition for approval was that when aspartame was to be used as a tabletop sweetener, its label was required to bear instructions not to use aspartame in cooking or baking. This is because aspartame breaks down to DKP when exposed to prolonged heat, with a consequent loss of sweetness. Finally, if a food containing aspartame purported to be, or was represented, for special dietary uses, as might be expected of a low calorie product, it was required to be labeled in compliance with FDA's special dietary foods regulations (21 CFR Part 105).

2. *Objections to FDA Approval.* As permitted by law (21 U.S.C. 348(f)(1)), two parties formally objected to the regulation on safety grounds and requested a formal evidentiary hearing (21 CFR Part 12). These parties were John W. Olney, M.D., and jointly, James S. Turner, Esq., and Label, Inc. (Legal Action for Buyers' Education and Labeling). Dr. Olney, then as Associate Professor of Psychiatry at the Washington University School of Medicine, St. Louis, Mo. (now Professsor), had performed research in animals regarding the toxic effects on the brain of certain Amino acids, including aspartic acid. Mr. Turner, a lawyer, represented himself and Label, Inc., a consumer-oriented group concerned about the regulation of chemicals in foods. Both parties objected primarily to the use of aspartame by children, asserting that the product might cause brain damage resulting in mental retardation, endocrine dysfunction, or both.

These parties later waived their right to a formal evidentiary hearing conditioned upon the establishment of a Public Board of Inquiry ("Board") consisting of three qualified scientists from outside the agency (21 CFR Part 13). This would be the first time FDA had ever used this alternative procedure. Searle agreed to delay marketing of aspartame temporarily, pending resolution of the safety questions.

3. *Audit of Searle Studies.* Before a Board could be convened, preliminary results from an audit of the records of certain animal studies conducted by or for Searle, including studies on aspartame, indicated a need for a comprehensive review of the authenticity of the aspartame research data. As a result, pursuant to 21 U.S.C. 348(e), FDA formally stayed the regulation authorizing the marketing of aspartame (40 FR 56907, Dec. 5, 1975).

With the knowledge and approval of Searle, the aspartame data in 15 pivotal studies were thoroughly audited to determine their authenticity. Three of these studies were audited by FDA and 12 by the Universities Associated for Research and Education in Pathology, Inc. (UAREP). This was a massive undertaking and took over two years to complete. UAREP concluded that the studies were authentic and, on December 13, 1978, submitted its 1,062 page report to FDA (Vols. 110, 111 and 112).[1] The agency agreed with UAREP that those 12 studies, as well as the three studies which it had reviewed, were indeed authentic. FDA then turned its attention to arranging the public hearing.

4. Establishment of Public Board of Inquiry

Dr. Olney, Searle, and FDA's Bureau of Foods (the Bureau) all submitted nominees for Board membership to then Acting Commissioner Sherwin Gardner who chose the following panel: Walle J. H. Nauta, M.D., Ph. D., Institute Professor, Department of Psychology and Brain Science, Massachusetts Institute of Technology; Peter J. Lampert, M.D., Professor and Chairman, Department of Pathology, University of California (San Diego); and Vernon R. Young, Ph. D., Professor of Nutritional Biochemistry, Department of Nutrition and Food Science, Massachusetts Institute of Technology. Dr. Nauta was named chairman.

As the issues for the hearing were being framed, Dr. Olney raised an additional concern about aspartame's potential to cause brain tumors. Although the Bureau disagreed with Dr. Olney's assessment, then Commissioner Kennedy agreed to add this issue to the hearing agenda (see letter to Dr. Olney, dated November 17, 1978, Vol. 120 [correspondence filed chronologically]).

On June 1, 1979, FDA announced the establishment of the Public Board of Inquiry to help resolve the issues surrounding the proposed marketing of aspartame (44 FR 31716). These issues were defined, in relevant part, as follows:

> 1. * * * whether the ingestion of aspartame, either aalone or together with glutamate, poses a risk of contributing to mental retardation, brain damage, or undesireable effects on neuroendocrine regulatory systems * * *
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> 2. * * * whether the ingestion of aspartame may induce brain neoplasms (tumors) in the rat * * *
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> 3. Based on answers to the above questions,
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> (a) Should aspartame be allowed for use in foods, or, instead should approval of aspartame be withdrawn?
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> (b) If aspartame is allowed for use in foods, i.e., if its approval is not withdrawn, what conditions of use and labeling and label statements should be required, if any?
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> (44 FR at 31717)

In the Federal Register of January 14, 1980, FDA announced the time and place of the hearing (45 FR 2908). The Board heard 3 full days of testimony, primarily from Dr. Olney and representatives from the Bureau of Foods and Searle.[2] The hearing dates were January 30 and 31 and February 1, 1980. Post-hearing briefs and/or rebuttal statements were filed by Dr. Olney, the Bureau, and Searle.

5. *The Board's Decision.* On October 1, 1980, the Board issued its decision. The Board agreed with the Bureau and Searle on the first issue, finding that aspartame consumption would not pose an increased risk of brain damage, resulting in mental retardation, endocrine dysfunction, or both. However, the Board agreed with Dr. Olney on the second issue, finding that the available data on laboratory rats did not rule out the possibility of aspartame's causing brain tumors, and that, indeed, the evidence suggested that aspartame might induce brain tumors. Accordingly, the Board concluded that aspartame should not be approved for marketing until further animal testing was conducted to resolve the brain tumor issue. Because of the Board's finding on the brain tumor issue, the Board withdrew approval of Searle's food additive petition and, after vacating the stay on the aspartame regulation (21 CFR 172.804), revoked that regulation in its entirety.

Dr. Olney, Searle and the Bureau all filed detailed exceptions to those portions of the Board's decision in which the Board disagreed with their respective positions (21 CFR 12.125(a)) [3] (hereafter "Exceptions"). Mr. Turner also filed exceptions, objecting to the scope of evidence considered by the Board. Searle and the Bureau each filed replies to both Dr. Olney's and Mr. Turner's exceptions (21 CFR 12.125(c)) (hereafter "Replies"). Under the established time frames, the administrative record closed on January 29, 1981, thus making the issue ripe for the final agency decision

II. Statutory Requirements for Approval of a Food Additive Petition

Section 409 of the act (21 U.S.C. 348), sets forth the statutory requirements for approval of a food additive [4] petition. With the enactment of the Food Additives Amendment in 1958, Congress established a premarket approval system whereby the company seeking to market a food additive must first obtain approval from the FDA.[5] Through this mechanism Congress sought to shield the public from unsafe or potentially unsafe products.

Section 409(c)(3) of the act, 21 U.S.C. 348(c)(3), directs FDA not to approve a food additive petition:

> * * * if a fair evaluation of the data before the Secretary [6]—
>
> (A) fails to establish that the proposed use of the food additive, under the conditions of use to be specified in the regulation, will be safe: * * *

This provision in the law, known as the "general safety clause," is thoroughly analyzed in the Commissioner's Decision on Cyclamate (Cyclamate Decision) (45 FR 61474, 61476–77, Sept. 16, 1980). Two points of that discussion warrant repeating here.

First, by requiring that the data "establish" safety, Congress clearly placed the burden of proving safety on the sponsor of a food additive petition, in this case Searle. FDA does not have to prove that the product is unsafe. This distinction is very important because it is possible that the data may fall in the "grey area" where the food additive has not been shown convincingly either to be safe or unsafe. In such a situation further testing may be necessary to resolve the issue. This was the agency's position on cyclamate (45 FR at 61477, col. 3). Similarly, Dr. Olney and Mr. Turner contend that the data on aspartame fall into this "grey area" which would require further testing before marketing.

The second essential point in interpreting the general safety clause is the meaning of the term "safe."

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[1] All citations to materials in the administrative record refer to the filing system in FDA's Dockets Management Branch (HFA–305).

[2] Mr. Turner made only brief presentations (see Tr./II/pages 187–200 and Tr./III/pages 237–39). Two additional hearing participants, Richard J. Wurtman, M.D., and Lloyd J. Filer, Jr., M.D., also addressed the Board, as did two consultants to the Board, William Nyhan, M.D. and Milton Brightman, M.D.

[3] Although the Board's hearing procedures are set out in 21 CFR Part 13, procedures following issuance of the Board's decision are determined by Subparts G and H of 21 CFR Part 12. See 21 CFR 12.32(f)(3).

[4] The term "food additive" is defined in 21 U.S.C. 321(s). There is no question that aspartame is a food additive.

[5] Any product containing an unapproved food additive is automatically deemed adulterated therefore unlawful. 21 U.S.C. 348(a).

[6] This decision has been delegated to the FDA Commissioner, 21 CFR 5.10(a)(1) (formerly section 5.1(a)(1)) and is not subject to the Secretary's reservation of authority under 5 CFR 5.11 or Executive Order 12291 because decisions on food additives are subject to 5 U.S.C. 556 and 557 (46 FR 13193, Feb. 19, 1981, and 46 FR 26052, May 11, 1981).

Although not defined in the statute itself, FDA regulations clearly reflect the legislative history by stating that safety means:

> * * * there is a *reasonable certainty* in the minds of competent scientists that the substance is not harmful under the intended conditions of use.

21 CFR 170.3(i) (emphasis added). Congressional reports show that the legislators were particularly impressed by expert testimony emphasizing the impossibility of providing, within the bounds of scientific knowledge, the absolute harmlessness of any chemical substance. H.R. Report 2284, 85th Cong., 2d Sess., pp. 4–5, 1958; Senate Report 2422, reprinted in (1958) U.S. Code Cong. and Admin. News 5301.[7] Congress therefore advocated the more realistic, yet still rigorous, standard of reasonable certainty of no harm, later embodied in FDA's regulation quoted above.

The statute leaves the methods and criteria for interpreting data up to the discretion and expertise of the agency. Congress did, however, direct FDA to consider the following three factors:

> (A) The probable consumption of the additive and of any substance formed in or on food because of the use of the additive;
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> (B) The cumulative effect of such additive in the diet of man or animals, taking into account any chemically or pharmacologically related substance or substances in such diet; and
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> (C) Safety factors which in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives are generally recognized as appropriate for the use of animal experimentation data.

21 U.S.C. 348(c)(5). In the case of aspartame, the product's mass marketing potential and expected consumption by persons of all ages, especially children, are aspects that have been considered in the safety evaluation.

The general safety clause applies to all types of health risks. For example, the provision was recently applied to both carcinogenicity and mutagenicity (45 FR 61474). *Cf. Ethyl Corp.* v. *E.P.A.*, 541 F. 2d 1 (D.C. Cir.) (en banc), *cert. denied*, 426 U.S. 941 (1976) (analogous statute applied to lead poisoning).

Food additives presenting health risks may be divided into two categories for safety evaluation purposes: (1) Those which are safe at or below certain levels but unsafe at other, higher levels; and (2) those which may be unsafe at any level. The analysis for these two categories is necessarily different. For example, the first issue in this proceeding, relating to possible "brain damage" (toxicity), concerns the former category whereby aspartame may be marketed so long as the projected consumption levels fall sufficiently below the estimated toxic threshold. In contrast, with respect to the second issue in this proceeding, relating to possible "brain tumors" (carcinogenicity), aspartame must be shown to a reasonable certainty not to cause brain tumors at all, for food additives producing carcinogenic effects at any level are deemed to be unsafe *per se*.[8]

In summary, the general safety clause places on Searle the burden of proving that the data in the administrative record establish that there is a reasonable certainty that aspartame will not be harmful under the prescribed conditions of use. Only if Searle meets this burden can the food additive petition be approved.

III. Summary of Decision[9]

The purpose of this proceeding has been to determine whether aspartame has been shown to be safe under Section 409 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 348. The legal standard for approving Searle's Food additive petition is whether there is a reasonable certainty in the minds of component scientists that aspartame will not be harmful to the public under its proposed conditions of use. What is required of the agency, therefore, is the conscientious exercise of principled, scientific judgment. As Commissioner of Food and Drugs, my responsibility is to review the evidence and evaluate it fairly, state my reasons for crediting or not crediting certain evidence, weight all the evidence, apply the correct legal standard, and decide.

This I have done, and I have concluded that aspartame has been shown to be safe for its proposed uses. My reasons for this conclusion, detailed in Sections IV–VII below, may be summarized as follows.

A. The Brain Damage Issues

The first set of objections to the aspartame regulation concerned two distinct types of brain damage, one associated with each of aspartame's two amino acid components, phenylalanine and aspartic acid. The Board disagreed with these objections and found aspartame to be safe in terms of potential brain damage.

Two points stand out which require affirming the Board's decision on these brain damage issues. One is the enormously large amounts of aspartame that a normal person would need to consume before reaching even a cautiously estimated toxic threshold. The second is the remarkably low amount of amino acid intake which would result, from even the 99th percentile of estimated aspartame consumption, in relation to the prevalence of these same amino acids in common protein foods.

1. *Phenylalanine:* The concern that has been raised over aspartame's phenylalanine (PHE) moiety is that sustained plasma-PHE levels above a certain toxic threshold may cause mental retardation, especially in the unborn fetus, similar to that resulting from phenylketonuria (PKU).

The toxic threshold for plasma-PHE levels is 100 micromoles per deciliter (μmol/dl) for normal persons, including infants, and 50 μmol/dl for pregnant women in order to protect their fetuses.[10] Normal plasma PHE levels range from 6 to 12 μmol/dl. Ingestion in a *single sitting* by an adult of a loading dose of aspartame, comparable to the 99th percentile of projected aspartame consumption for an *entire day*, caused plasma PHE levels to rise from a fasting level of 6 μmol/dl to a peak of only 11 μmol/dl, still within the normal range after eating and nowhere close to the toxic threshold. In clinical testing it took approximately six times that amount to induce plasma-PHE rise to the 50 μmol/dl level. For a 60 kilogram adult (132 pounds), this corresponds to 600 aspartame tablets or 24 liters (approximately 6½ gallons) of aspartame-sweetened beverage consumed in a single sitting. Such an

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[7] These Congressional reports are quoted at length in 45 FR at 61477, col. 1.

[8] *But see Monsanto* v. *Kennedy*, 613 F. 2d 947, 955 (D.C. Cir. 1979), which indicated that the agency has discretion to determine that the quantity of a potentially carcinogenic substance found in a food "may be so negligible as to present no public health or safety concerns * * *"

It should also be noted that another portion of section 409, dealing specifically with carcinogenicity (the so-called Delaney Clause), is not applicable in this proceeding. That provision prohibits the approval of any food additive petition where the additive has been shown conclusively to be carcinogenic (see generally, Cyclamate Decision, 45 FR at 61476, col. 3). As noted above, however, those opposing approval of aspartame do so on the grounds that the data on aspartame fall into the "grey area" (i.e., safety has not been demonstrated), not that aspartame is conclusively carcinogenic.

[9] This summary was made publicly available on July 15, 1981 as a vehicle for announcing the decision as soon as possible, without awaiting publication of the entire Final Decision in the **Federal Register**. Minor changes or deletions have been made to conform to or avoid unnecessary redundancy with other portions of this Final Decision, or to correct typographical errors.

[10] The difference for fetuses is that the placenta maintains a 1:2 ratio gradient between the maternal and fetal circulation in the plasma PHE concentrations (Board's Decision at 13). Thus, a plasma PHE level of 50 μmol/dl in an expectant mother creates a plasma PHE level of 100 μmol/dl for her fetus.

enormous intake at one time, let alone continuously over a sustained period, is inconceivable. Thus, it appears that consumption of aspartame in reasonable amounts, or even in unreasonable but physically possible amounts, will not cause the type of brain damage of concern here (see generally, Board's Decision at 13–15).

I also agree with the Board's conclusion that the marketing of aspartame will not create any additional risk to PKU children not on a restricted diet, individuals heterozygous for PKU, undetected cases of PKU, or pregnant women with the special condition of hyperphenylalanemia (see Board's Decision at 15–20).

Another way to consider the phenylalanine issue is to compare the projected aspartame consumption to the amount of phenylalanine present in common protein products. For example, consumption of aspartame at the projected 99th percentile level (34 mg/kg/day) would increase the normal overall PHE daily intake by only about 6 percent. Even consumption of aspartame at the unlikely level of three times that projected 99th percentile level would increase the normal overall PHE daily intake by only 15 to 20%, still within expected, normal variations in protein consumption (Board's Decision at 20–21). Thus, from the standpoint of phenylalanine intake, aspartame appears to present no greater hazard than common protein rich foods considered essential for proper nutrition.

2. *Aspartic Acid:* The concern raised over increased aspartic acid (ASP) consumption stems from animal studies showing that extremely high doses of ASP, glutamic acid (GLU), and other "excitatory" amino acids can cause focal brain lesions, primarily in areas of the brain that regulate the endocrine system. With two important differences described below, the analysis parallels that in the phenylalanine section in terms of first setting a toxic threshold and then determining whether the projected consumption of aspartame will keep plasma levels sufficiently below that threshold. The first difference is that it is the *combined* plasma ASP+GLU levels which must be scrutinized, both because administration of either GLU or ASP increases plasma levels of both amino acids, and because the two amino acids are equipotent and mutually additive in producing the lesion (see Board's Decision at 22–23). Glutamic acid is prevalent in the food supply, often as the food additive monosodium glutamate (MSG). The second difference is the scientific belief that a *single surge* of plasma GLU+ASP levels above the toxic threshold can cause brain damage, unlike the case with phenylalanine toxicity where a sustained high plasma level is needed.

The Board established the plasma GLU+ASP level of 100 μmol/dl as the toxic threshold for risk assessment purposes. This was an estimate, and an extremely conservative one, based on experimental findings in the most sensitive species at the most sensitive age (the infant mouse). Even with this cautious approach, the data clearly establish safety for anticipated aspartame consumption.[11]

Clinical testing in adults using high aspartame doses (equivalent to 1½ times those at the 99th percentile of projected daily consumption), administered at a single sitting, showed no significant rise in either the plasma ASP or GLU concentrations. Even with an enormous aspartame dose (equivalent to six times that at the 99th percentile of projected daily consumption, or 600 to 800 aspartame tablets) administered at a single sitting, the plasma GLU+ASP level rose from 2.7 μmol/dl to only 7 μmol/dl, still within the normal range found after eating. A further study using 1 year old infants showed similar minor rises in plasma ASP+GLU levels. Finally, other studies in adults showed that ingestion of aspartame (equivalent to the 99th percentile of projected daily consumption) did not further increase elevations of plasma GLU+ASP levels caused by the administration of very high doses of MSG alone (see generally, Board's Decision at 32–33).[12]

The Board also addressed the risk to the PKU heterozygote, the nursing infant, and the unborn fetus, and concluded that these groups were at least as safely protected as normal adults or children (*id.* at 33–34). I agree with these conclusions also.

An additional point worth noting is that the plasma ASP+GLU levels that were observed were short-lived, receding to their baseline value after three hours. Thus, as the Board explained, "repeat-doses of the same enormous magnitude, when spaced 3 hours apart, are unlikely to escalate the GLU+ASP concentration much beyond the level induced by the first dose" (*id.* at 37).

Finally, as was the case the phenylalanine component, the ratio of projected aspartic acid consumption resulting from aspartame to that derived from a normal diet is quite small. For example, in the age group of most concern, young children, consumption of aspartame at the 99th percentile level of projected consumption (34 mg/kg/day) will only increase total aspartic acid consumption by approximately 4%, clearly an insignificant amount.

The conclusion compelled by these findings is that the addition of aspartame to the diet, in any conceivable amount (far beyond the upper projected consumption levels), will not cause focal brain lesions of the type alleged by the objectors to the aspartame regulation.

B. The Brain Tumor Issue

This was the issue on which the Board disagreed with the Bureau of Foods and concluded that further testing was necessary before aspartame could be marketed. With due respect to the Board, I agree with the Bureau of Foods that the data presented at the hearing establish that there is a reasonable certainty that aspartame does not cause brain tumors in laboratory rats. This conclusion is confirmed by additional evidence submitted after the Board issued its decision.

1. *Spontaneous incidence rate of brain tumors.* The most controversial issue at the hearing was whether a significant disparity existed between the brain tumor incidence rates as reported in the Searle studies in a certain strain of rat and the spontaneous incidence rate (or background rate) for brain tumors in this strain as reported in the scientific literature. The Board found that such a disparity existed, and that the disparity was so great as to preclude the key Searle rat studies (E–33/34 and E–70) from providing adequate evidence of aspartame's safety (Board's Decision at 43–45). The Bureau of Foods disagreed with the Board, believing that reliable data in the record established a spectrum of reported spontaneous brain tumor incidences that encompassed the rates reported in the Searle studies.

I agree with the Bureau's assessment of the background rate for brain tumors in the pertinent strain of rats. Although the Board placed considerable weight on published studies reporting spontaneous brain tumor incidence rates of less than 1% (.09%, .6%, and .7%), these studies all had some flaws and, in addition, must be supplemented by other data presented at the hearing reporting higher

[11] In contrast to the analysis in the phenylalanine section, the above analysis does not set the toxic threshold for pregnant women (for protection of the fetus) as half that for normal individuals because the placenta forms an effective barrier against the transfer of both ASP and GLU to the fetus (Board's Decision at 34).

[12] Dr. Olney has asserted that an additional study in children is necessary to measure the effects of aspartame administered in conjunction with MSG. For the reasons discussed in Section IV[C][3][d] below, I do not believe such an additional study is necessary.

spontaneous incidences (e.g., 2.2% and 3.2%) which are consistent with those in the Searle studies. One reason for giving weight to these studies reporting higher incidences is that the chances are considerably greater that additional tumors may have been missed in the low-incidence studies than that tumors were included by mistake or misdiagnosed in the high-incidence ones.[13]

Of special significance is the reference reporting an incidence of 2.2%. These data were collected by the National Cancer Institute (NCI) from its carcinogenesis bioassay program. The participating organizations were NCI and Hazelton Laboratories, the same laboratory used by Searle for its key aspartame rat studies. Moreover, the rats used for the NCI data were all control animals of the same strain and commercial source used by Searle, and the size of NCI's sample population was nearly identical to the control groups (combined) in Searle's rat studies. The reported spontaneous incidence rates were also nearly identical: 2.2% (8/368) for the NCI data and approximately 2% (7/356) for the combined control groups in the Searle studies.

2. *Comparison with concurrent controls.* Given the consistency between the control incidence rates in the Searle studies and the background rate, I find that Searle's studies should be evaluated primarily by comparing the aspartame-treated animals to their concurrent controls. Using these comparisons, as analyzed by the Bureau of Foods, I find that Searle studies E–70 and E–33/34 both are negative studies.

It is undisputed by the hearing participants that the E–70 study is a negative study when the treatment groups are compared to the concurrent controls. The only controversy lies in the E–33/34 study, where the Board found a possible dose response and accelerated tumor onset, both potential indicators of carcinogenicity. The finding of the dose response, however, is largely dependent on a single, very early-occurring, unusual tumor (a medulloblastoma), which was probably not aspartame related, and the finding of accelerated tumor onset was based in part on factual errors. For these reasons, as detailed in Section V below, I agree with the Bureau of Foods that E–33/34 is also a negative study.

Finally, a third long-term study assessing aspartame's carcinogenic potential using a different strain of rat, concluded recently in Japan and submitted into the record after the Board issued its decision, also appears to be negative in terms of brain tumors. Although this study has not been critiqued by the hearing participants, the data on their face provide additional support for my conclusion on this issue.

3. *Conclusion on brain tumors.* The available data, viewed as a whole, establish that aspartame is safe in terms of brain tumors for its proposed uses.

C. Conditions of Use

The labeling conditions set forth in the aspartame regulation (21 CFR 172.804) before it was stayed shall still be required. These include a prominently displayed alert to persons with PKU that the product contains phenylalanine; directions not to use aspartame in cooking or baking because the compound loses its sweetness when exposed to prolonged heat; and labeling in compliance with FDA's special dietary foods regulations (21 CFR Part 105) where appropriate. In addition, because the safety assessment on the brain damage issues is tied closely to projected aspartame consumption levels, as a condition for approval Searle is to monitor the actual use levels of aspartame and to provide such information on aspartame's use to the Bureau of Foods as the Bureau may deem necessary.

D. Concluding Remarks

The safety evaluation of aspartame has been a long and arduous process, spanning the tenure of several FDA Commissioners. Although my conclusion is the same reached by the agency nearly seven years ago, the intervening years have not been without their benefits in terms of the evidence showing the safety of aspartame. Much of the data, especially clinical data, relied upon by Searle at the public hearing, came from studies conducted at the firm's behest during the interim. Also taking place during this period was the detailed independent audit of Searle's preclinical data conducted by the Universities Associated for Research and Education in Pathology, Inc. (UAREP) and the agency. Few compounds have withstood such detailed testing and repeated, close scrutiny, and the process through which aspartame has gone should provide the public with additional confidence of its safety.

The pinnacle of this process was the hearing before the Public Board of Inquiry, the first of its kind to be convened. The scientific issues presented to it were intellectually complex and carried wide ranging public health ramifications. These scientific issues were debated vigorously at the hearing, and the Board performed admirably in maintaining a judicial decorum and in crystalizing its views of the issues in its Initial Decision. I would be remiss if I did not express to each of the Board members the appreciation of both the agency and the public for the invaluable service which they performed.

IV. Evidence on the Brain Damage Issues

The first issue at the hearing was as follows:

> The question has been raised whether the ingestion of aspartame, either alone or together with glutamate, poses a risk of contributing to mental retardation, brain damage or undesirable effects on the neuroendocrine regulatory systems. From available evidence, what can be concluded in relation to this question? The objecting parties believe that the ingestion of aspartame, either alone or together with glutamate, does pose a risk of contributing to these effects. The Bureau of Foods believes that the ingestion of aspartame, either alone or together with glutamate, does not pose a risk of contributing to these effects.

(44 FR at 31717). The Board considered this issue in two parts, one relating to the phenylalanine component of aspartame, and one involving the aspartic acid component. Aspartame's two amino acids are each associated with a different kind of brain damage. Only the aspartic acid component interrelates with glutamate. The Board's subdivision is followed in this decision. Before discussing the specific brain damage issues, however, it is necessary to address the projected consumption levels of aspartame.

A. Projected Consumption Levels

Because the non-toxicity of aspartame is based on safe levels of use, the projected estimates of aspartame consumption are central to the safety evaluation. Three methods have been used to arrive at these estimates, each of which attempt to exaggerate projected consumption levels in order to account for potential heavy users of aspartame-sweetened products.

The first method, used by the Bureau of Foods, is to assume that aspartame is substituted for *all sucrose* in the diet of an average 60 kg man. In this situation, aspartame consumption would be approximately 8.3 mg/kg/day (Tr./1/ page 60, line 11—page 61, line 2). Although this figure is based on the needs of an average consumer rather than a "heavy user," this shortcoming is counterbalanced by the assumption that aspartame would replace all sucrose in

[13] This wider spectrum of reported spontaneous incidence rates is further supported by data submitted into the record by Searle and the Bureau of Foods after the Board issued its decision.

the diet, an unlikely event. Moreover, if aspartame is substituted for *all carbohydrates* as well as all sucrose, the average 60 kg man would consume approximately 25 mg/kg of aspartame per day (Tr./I/page 61, lines 7–23). Surely this would appear to be a highly exaggerated figure.

The second set of consumption estimates was based on data generated by the Market Research Corporation of America ("MRCA"), submitted into the administrative record by the General Foods Corporation (Vol. 103). The MRCA has a large computer bank which tabulates actual dietary records kept by 4,000 households (approximately 12,000 individuals) over a 2-week period, staggered throughout the year. These estimates are based on what people in given age brackets actually eat and are broken down into different percentile levels, to account for both the average and heavy users (Vol. 103, pages 1–3; Tr./I/pages 92–93; Tr./III/page 105).

One additional aspect of the MRCA estimates is that the survey covered two groups of products: "Group A" products were those in Searle's current food additive petition; and "Group B" products included seven additional categories for which aspartame has marketing potential, including carbonated soft drinks, probably the largest potential use (Vol. 103, pages 2–3). Inclusion of the Group B categories provides an extra "cushion" for purposes of Searle's current petition.

The survey showed young children (age 2–5) to be the largest consumers in proportion to their body weights. For Groups A and B combined in this age group, the mean potential exposure was 11.1 mg/kg, and the 90th percentile value was 25.0 mg/kg.[14] The "under 2" and "6–12" age groups were the next biggest users, each with mean and 90th percentile aspartame exposure levels of approximately 6 and 16 mg/kg/day, respectively. The other age groups had decreasing exposure with age, with the "25 and older" category having the lowest 90th percentile level of only 5.9 mg/kg of aspartame per day. (See detailed chart in Vol. 103, page 6.) For all age groups, the 99th percentile figure was 34 mg/kg of aspartame on a daily basis (Tr./I/page 93, lines 10–15).

Finally, Searle's chief witness, Dr. Stegink, calculated yet a third set of figures (using a method similar to that employed by the Bureau of Foods) by substituting aspartame for all carbohydrate energy requirements, including those supplied by sucrose. Using a 70 kg adult, Dr. Stegink estimated this maximum aspartame usage to be 23–25 mg/kg/day (Tr./I/page 94, line 1—page 95, line 3). Dr. Stegink also calculated aspartame intake for a 10 kg infant, assuming aspartame was substituted for all energy requirements now supplied by sucrose, and arrived at an estimated intake of 19 mg/kg/day (Tr./I/page 96, line 6—page 97, line 14).[15]

Although these figures are only estimates, the consistency of the figures across different methods adds significantly to their credibility. In order to be as cautious as possible, the Board used the 34 mg/kg/day figure as the benchmark for use in the risk assessment analysis. This was the highest figure obtained from any of the estimates and represented the 99th percentile for all age groups from the MRCA survey. I agree with the Board's use of this 34 mg/kg/day figure. More importantly, as detailed in the following sections, the non-toxicity of aspartame has been clearly demonstrated in all age groups at levels several times this 99th percentile figure.

B. Phenylalanine

As noted in Section III(A)(1) above, the Board concluded that the projected level of aspartame consumption by normal humans "cannot be expected to increase the incidence of that particular form of mental retardation that is associated with sustained elevation of plasma-PHE levels" (Board's Decision at 20). This conclusion also applies to fetuses, infants, and individuals heterozygous for PKU (*id.* at 14–15). For individuals on a PHE restricted diet (i.e., PKU children and pregnant women known to have hyperphenylalanemia)[16] the Board found that the cautionary label proposed by the Bureau of Foods ("Phenylketonurics: Contains Phenylalanine") would sufficiently protect these individuals who are accustomed to controlling carefully their dietary intake of phenylalanine (*id.* at 21). For the "unfortunate case" of the pregnant woman who does not know she has hyperphenylalanemia, or for undetected cases of PKU children, the Board concluded that "the normal food-derived PHE poses a much greater risk to the patient (or the unborn child) than would aspartame, even when consumed in large amounts" (*id.*).

I agree with the Board's conclusions and careful discussion of these complex issues, and therefore adopt the Board's decision as my own. The relevant portion of the Board's decision (pages 11–22) is reproduced in Appendix A to this decision.[17]

Dr. Olney's raised two exceptions of this issue. The first exception relates to the percentage of PKU children who are not diagnosed at birth (Olney's Exceptions at 1). The Board used a figure of 10%, apparently relying on the testimony of Dr. Koch (Tr./II/page 11). Dr. Koch testified that 10% of all PKU cases may be missed "due to the lack of a good quality program" (*id.*). Dr. Olney asserts that these 10% are missed due to the error inherent in the screening method, and that another group of PKU babies (approximately 20% of those afflicted) are missed because they are among groups of infants that had not been screened at all. Dr. Olney adds these two figures and concludes that

[14] 90th percentile means that in 9 out of 10 days an individual will have an intake equal to or less than the mg/kg figure.

[15] The amount of aspartame that would be used in specific products under consideration, as supplied by the General Foods Corporation and Searle, are as follows:

a. *Table Top Sweetener:* 40 mg in a free flowing packet; 20 mg in the tablet. These are equivalent to two and one teaspoons of sugar, respectively.

b. *Dry Beverage Mix (e.g., Kool Aid or Tang):* 120 mg per 8 oz. glass.

c. *Gelatin or Pudding:* 32 mg per serving (half cup).

d. *Whipped Toppings:* 10 mg per serving (two heaping tablespoons).

e. *Breakfast Cereals:* 90 mg per serving (one oz. or one cup).

f. *Chewing Gum:* 8 mg per stick.

(Searle's Post-Hearing Brief, Vol. 155 at 12–13). These figures are in straight milligram amounts, which need to be divided by the weight of the consumer (in kilograms) for comparison to the estimates described above.

[16] Hyperphenylalanemia, as described in more detailed below in relation to Dr. Olney's exceptions, is a condition whereby a person's plasma PHE levels are higher than normal but lower than a person with PKU. Although these individuals are not themselves brain damaged, pregnant women with this condition may give birth to brain damaged babies if they do not keep themselves on a low phenylalanine diet.

[17] One minor modification to the Board's decision is necessary. The change in no way affects the validity of its conclusions. In various places, the Board uses as a benchmark, for comparison purposes, the amount of phenylalanine intake that would be consumed by a 4 ounce hamburger. The phenylalanine content of a 4 ounce hamburger used by the Board (4,000 mg) was based on testimony by one of Searle's witnesses, Dr. Koch (Tr./II/page 14, lines 21–22). The figure, however, does not appear to be correct for a 4 ounce *cooked* hamburger. According to *Geigy Scientific Tables* (7th Ed., Geigy Pharmaceuticals (1970) at 516), based on the percentage of protein in a cooked hamburger (24.2%) and the percentage of that protein composed of phenylalanine (4.2%), the PHE content of a 4 ounce cooked hamburger is approximately 1,150 mg (not 4000 mg). Although estimates of phenylalanine content vary depending on whether the meat is considered as cooked, uncooked or dry weight, the amount of phenylalanine in a cooked hamburger is the most appropriate comparison for these purposes because that is what people actually eat. A similar adjustment should be made for a hot dog. Even with these changes, the upper projected level of aspartame consumption is still low when compared to the amount of phenylalanine which would be derived from a protein-rich meal.

30% of all PKU children in this country remain undiagnosed.

I disagree. Although the exact number or percentage of PKU children who remain undiagnosed *at birth* was subject to some dispute at the hearing (*compare* Tr./I/page 39, lines 1–16 *with* Tr./II/page 11, lines 1–8), Dr. William Nyhan, a consultant to the Board and an acknowledged expert on PKU, emphasized that nearly all PKU children who are not diagnosed at birth by a routine screening test are nevertheless diagnosed by 8–10 months of age by the classical diagnostic techniques (i.e., due to abnormal development) (Tr./I/page 224, line 9—page 225, line 8). Dr. Nyhan also emphasized that an infant with PKU, whether diagnosed or not, still needs approximately 90 mg/kg of phenylalanine per day as an essential nutritional requirement (Tr./I/page 229, lines 6–10). These nutritional requirements, together with the fact that aspartame is not being approved for infant formulas or infant foods and that PHE levels are not elevated in breast milk, led Dr. Nyhan to conclude, and I agree, that the undiagnosed PKU infant will not be at additional risk by the marketing of aspartame (Tr./I/page 232, line 1—page 233, line 5; *cf.* Tr./II/page 23, lines 14–18). As the Board so correctly stated, an undiagnosed PKU child "is at risk first and foremost by being undiagnosed and hence permitted to consume meals that are standard for normal children" (Board's Decision at 17).

Dr. Olney's second exception concerns a special subcategory of pregnant women who have a condition known as "hyperphenylalanemia" but do not know it (Olney's Exceptions at 1–2). This is an unusual condition which can affect a fetus without affecting the mother. As noted in Section III above, normal plasma PHE levels vary between 6 and 12 μmol/dl. By comparison, brain damage does not result in a normal individual unless the plasma PHE level is sustained at 100 μmol/dl or higher, or in a fetus unless the mother's plasma PHE level is sustained at a level of 50 μmol/dl or higher. Women with hyperphenylalanemia have plasma PHE levels which fluctuate between 25 and 120 μmol/dl. Thus, most of these women are unaffected themselves because their plasma levels are not sustained above the critical 100 μmol/dl level. What is equally clear, however, is that many of these women during pregnancy will have sustained plasma PHE levels at or above the critical 50 μmol/dl figure, thereby giving birth to "brain-damaged children destined to grow up mentally retarded" (Board's Decision at 19). The only remedy to this problem, however, a problem which currently exists whether or not aspartame is marketed, is first to identify the women who have this condition, and then put them on a phenylalanine restricted diet just as one would a child with PKU (*id.*).

For the reasons stated above and in the Board's decision, I find that the data establish that there is a reasonable certainty that the proposed use of aspartame will not cause or aggravate the type of diffuse brain damage associated with sustained high plasma levels of phenylalanine.

C. Aspartic Acid

1. *Issue:* The second toxicity issue before the Board was whether the expected consumption of aspartame, either alone or together with glutamate (i.e., as MSG), poses a risk to humans of causing focal brain lesions (and associated neuroendocrine changes) of the type which has been demonstrated in animals after the administration of these substances. In addressing this issue, three questions must be answered: (1) Based on extrapolation from animal data, what is the toxic threshold, in terms of the plasma levels of aspartic acid (ASP) and glutamic acid (GLU) which likely have to be reached to induce focal brain lesions in man; (2) in what amounts would aspartame have to be consumed (alone or with MSG) by humans to elevate plasma GLU + ASP to this toxic level; and (3) whether the projected consumption of aspartame will be sufficiently below the amount needed to reach this toxic level.

2. *Board's decision.* After considering these questions, the Board concluded that "[e]levations of plasma GLU + ASP concentration even to the lowest level that could be suspected of being neurotoxic (100 μmol/dl) would require in inconceivably high oral aspartame intake," and that "the ingestion of aspartame, either alone or together with glutamate, cannot be expected to increase the incidence of brain damage or dysfunction of neuroendocrine regulatory systems" (Board's Decision at 38, 39).

I agree with the Board's conclusion and thorough analysis of this issue and therefore adopt the Board's discussion as my own, with minor modifications as noted below. The relevant portion of the Board's decision (pp. 22–38) is incorporated here by reference, and is reproduced in Appendix B to this decision. Because Dr. Olney and the Bureau of Foods have taken exception to various portions of the Board's decision, I will address each of those exceptions directly, after placing the issues in context with a brief background discussion.

3. *Analysis*—a. *Background.* The type of brain lesion of concern here is one which has been studied in animals over the past 12 years. It is produced by high doses of glutamate, aspartate (either given as aspartate *per se* or as aspartame), and by other "excitatory" amino acids and their analogs. The lesion primarily consists of dead or dying nerve cells (neurons.[18] The most sensitive region of the brain appears to be the arcuate region of the hypothalamus; other brain regions and the retina are also affected at higher doses. The affected areas of the hypothalamus are involved in endocrine conrol, via the pituitary gland. Indeed, long-lasting endocrine changes have been produced by administration of high doses of MSG to neonatal mice and rats (reviewed in Vol. 128, Tab 67 (Olney, "Excitotoxic Amino Acids: Research Applications and Safety Implications" in Filer, Jr. et al., eds., *Glutamic Acid: Advances in Biochemistry and Physiology*, p. 287 + (1979))). Significantly, it is believed that the lesion can be produced by a single surge of plasma GLU/ASP above some toxic threshold.

The total plasma level of GLU + ASP is a more relevant measure than that of either amino acid alone. As noted in Section III(A)(2) above, this is because administration of either GLU or ASP increases plasma levels of both amino acids and because the two amino acids are equipotent and mutually additive in producing the lesion (see Board's Decision at 22–23).

b. *The toxic threshold.* The Board adopted a plasma GLU/ASP level of 100 μmol/dl as the toxic threshold in humans for risk assessment purposes (Board's Decision at 35). This value was taken from studies in infant mice where an oral dose of 500 mg/kg MSG, given by gavage [19] in aqueous solution, caused focal brain lesions in 50% of the animals. This dosage was then shown to result in a plasma GLU level of approximately 100 μmol/dl. As the Board itself noted, this was a conservative estimate (*id.*). I

[18] The affected parts of the neurons are the dendrites and cell bodies, but not axons.

[19] Test compounds are usually administered by either an oral or parenteral route. Compounds administered orally may be given either mixed with the diet or force-fed by different methods, such as a stomach tube (gavage). Parenteral administration involves the injection of the compound under or through the skin. Examples include: subcutaneous injection ("s.c.") meaning beneath the skin; intravenous injection ("i.v.") meaning into a vein; and intraperitoneal injection ("i.p.") meaning into the peritoneal cavity.

agree that the estimate is conservative, for the following reasons:

(1) *Most Sensitive Animal Species:* The threshold value was derived from studies on mice, which appears to be the most sensitive animal species to this type of brain lesion. Rats and guinea pigs are somewhat less sensitive than mice; lesions have not been produced in dogs (Board's Decision at 24; see also Vol. 126, Tab 9 (Heywood and Worden, "Glutamate Toxicity in Laboratory Animals" in Filer, Jr., *supra*, p. 203+)). The susceptibility of primates is controversial. Most of the data in infant monkeys showed that doses of MSG, capable of raising plasma GLU+ASP levels up to 445 μmol/dl, did not cause lesions (Vol. 152 [Reynolds, Section VII and Stegink, Section VI–A at 2 and Table 1]; see also Bureau's Reply at 7, 8), although one report describes lesions in infant monkeys with plasma GLU levels of approximately 120 μmol/dl (Olney, Vol. 141, Tab I–81). (The interpretation of these studies conducted on monkeys is discussed below.)

(2) *Most Sensitive Age.* The threshold value was based on data in infant mice, the most sensitive age of mouse to elevations in plasma GLU/ASP levels. Sensitivity in the mouse rapidly decreases with age, with weanling and adult mice approximately one-fourth and one-sixth as sensitive, resectively, to elevations in plasma GLU/ASP levels than the infant mouse (Vol. 143, Tab 116 [O'Hara and Takasaki, *Toxicology Letter* 4:299 (1979)]).

Though the Board chose a conservative estimate, I agree with the Board that the value of 100 μmol/dl is the appropriate toxic threshold for risk assessment purposes. In the interest of public health protection, a cautious approach is warranted, especially where, as here, the state or our scientific knowledge does not permit a more precise estimate to be made with sufficient confidence (*cf.* 45 FR at 61480, n. 12). Moreover, even while using this extremely conservative estimate, aspartame's safety regarding focal brain lesions has still been clearly demonstrated. This provides additional confidence that the proposed use of aspartame will not be harmful.

The Bureau believes the toxic threshold should be derived from monkey studies, not rodent studies, because the monkey's brain organization and development allegedly make that animal a more relevant model for humans regarding GLU/ ASP induced brain lesions. Based on the available monkey data, the Bureau considers at least 445 μmol/dl to be a more reasonable toxic threshold (see generally, Bureau's Exceptions at 4–6 and Bureau's Reply at 8–11). I disagree with the Bureau. Even assuming that monkeys are a more appropriate model in this instance, the monkey data available on this issue are not entirely consistent with the Bureau's position. Although data from four laboratories involving 50 infant monkeys support the Bureau's position (Reynolds, Vol. 152 at Section VII and Stegink, Vol. 152, Section VI–A at 2 and Table 1), data from a fifth laboratory involving 6 infant monkeys showed brain lesions at plasma GLU levels of approximately 120 μmol/dl (Olney, Vol. 141, Tab I–81). The Board emphasized that the monkey data are "controversial" and found itself "unable to resolve the conflicts that arose over this issue at the public hearing" (Board's Decision at 25). Consistent with its overall cautious approach, however, the Board "accepted" the value of 120 μmol/dl as the critical plasma GLU level in the immature monkey "to remain on the side of safety" (*id.*).

I agree with the Board that the monkey data are controversial and difficult to resolve on the basis of the current record. However, I dasagree with the Board to the extent that it is necessary to make even a tentative finding on this issue. Given the fact that a plasma GLU+ASP level of 100 μmol/dl has been established for risk assessment purposes based on the mouse data, and that *all* the monkey data show a higher toxic threshold, it is not necessary for me to make any conclusion regarding the monkey data for purposes of the aspartame proceeding.

c. *Effect of aspartame on plasma GLU/ASP levels in humans.* The Board concluded that the ingestion of aspartame by humans, even in unusually large quantities, did not cause plasma GLU/ASP levels to rise anywhere close to the estimated toxic threshold of 100 μmol/dl (Board's Decision at 36–38). Indeed, the Board cited convincing data showing that plasma GLU/ASP levels in humans receiving unusually large doses of aspartame remained within normal after eating limits (*id.* at 32, 33, referring to Vol. 152 [Stegink VI–A at 7–9 and VI–B at 31]). For example, a loading dose of 200 mg/kg aspartame in the adult (equivalent to 600–800 aspartame tablets) produced a combined plasma GLU+ASP rise from a baseline of 3 μmol/dl to a peak of only 7 μmol/dl (Vol. 115, Section III). In the 8 to 12 month old infant, a loading dose of 100 mg/kg aspartame caused the plasma GLU+ASP level to rise from a baseline of 9 μmol/dl to a peak of only 11 μmol/dl (Vol. 140, Tab 5).[20]

These human studies, as well as the aspartame/MSG interaction study discussed below in relation to Dr. Olney's exceptions, were performed under "higher risk" conditions (regarding rises in plasma GLU/ASP) than those likely to be encountered under actual use, as follows:

(1) *High Doses.* The extremity of the doses used in the two studies described above is particularly impressive. The 99th percentile of projected *daily* consumption for aspartame is 34 mg/kg. In comparison, no marked plasma ASP+GLU rise in adults or infants was seen with doses administered in a *single sitting* equivalent to 6 and 3 times, respectively, that 99 percentile figure.[21]

(2) *Absence of Carbohydrates:* It has been shown that the presence of food, particularly carbohydrates, inhibits the rise in plasma GLU after MSG dosing (Vol. 149, Tab I–99c (Stegink, et al., "Factors Affecting Plasma Glutamate Levels in Normal Adult Subjects" in Filer, Jr., *supra*, page 333+)). Thus, lesions have not been produced in rodents by aspartame or MSG when administered in the diet, even at extremely high doses, presumably because threshold plasma GLU/ASP levels were not reached. In the human plasma level studies, fasting subjects were used, and the vehicle for aspartame administration was either unsweetened Kool-Aid or orange juice. The vehicle for MSG administration in the interaction study discussed below in relation to Dr. Olney's exceptions was a low carbohydrate consomme.

(3) *High Concentration.* Another factor which may affect plasma levels is the concentration of the substance administered. For example, for a given MSG dosage, the greater the MSG concentration, the greater is the plasma GLU level and hypothalamic damage (Vol. 136, Tab 10 [Bizzi, et al., *Toxicology Letter* 1: 123 (1977)]). The aspartame concentrations in the human studies ranged from 0.6–2.8%, while a typical concentration in a presweetened dry beverage mix is 0.05% (Bureau's Reply at 16). Even with these extremely high concentrations, no significant

[20] The Board noted only the plasma ASP (instead of GLU+ASP) level which peaked at 2.6 μmol/dl (Board's Decision at 33).

[21] It should also be mentioned that these slight increases in plasma GLU + ASP levels are short-lived, i.e., the levels returned to baseline within three hours after ingestion of aspartame. Thus, even repetitive ingestion of these high doses, spaced three hours apart, would not be expected to increase plasma levels above the slight increases produced by the first dose (Board's Decision at 37).

elevations in plasma GLU/ASP levels resulted, as noted above.

The Board also cited data showing that aspartame did not potentiate (i.e., augment) the effect on plasma GLU levels induced by MSG. For example, the Board cited a human study showing that aspartame at 23 mg/kg had no effect on the plasma GLU/ASP levels resulting from ingestion of a hamburger-milkshake meal to which 150 mg/kg of MSG had been added; similar results were also found using doses of 34 mg/kg aspartame and 34 mg/kg MSG (Board's Decision at 32, 33, referring to Vol. 152 (Stegink VI–B at 18–22)). Similar results were found in an aspartame-MSG interaction study performed under "higher risk" conditions (Vol. 139, Tab 12) as discussed below.

d. *Dr. Olney's exceptions regarding the effect of aspartame on plasma GLU/ASP levels in humans.* Dr. Olney has taken strong exception to the Board's decision on this focal brain lesion issue (see generally, Vol. 158, Tab 261). His primary concern is that the Board did not address the question of plasma GLU/ASP levels in *children* following the ingestion of *aspartame in conjunction with MSG* under "high-risk" conditions,[22] and that such a study should be performed in view of the fact that children are already exposed to food products containing large amounts of GLU and ASP. To support his position, Dr. Olney cites the following three lines of evidence which were not discussed in the Board's decision.

First, Dr. Olney states that some commercial soup products contain enough added GLU (as MSG) to provide 100 to 130 mg/kg for a young child, and that a similar dose of GLU, when fed in noncarbohydrate solution to human adults, caused a surge of blood GLU/ASP to levels substantially exceeding the 100 μmol/dl level which the Board determined to be the toxic threshold (Olney's Exceptions at 2–3).

This point, however, concerns the risk associated with ingestion of MSG itself which is not at issue here. What is at issue is whether the addition of aspartame to the food supply will increase or potentiate any elevations of plasma GLU/ASP which might be caused by MSG, and, as discussed below and in the Board's decision, the available evidence suggests that it will not.

Dr. Olney next points to a study in human adults, performed under "high risk" conditions regarding plasma GLU/ASP elevations (i.e., fasting subjects, with MSG given in low-carbohydrate consomme and aspartame given in unsweetened Kool-aid) in which, following the addition of both MSG and aspartame, plasma GLU/ASP levels in *some* individuals were observed to be nearly twice as high as those found following the addition of MSG alone (Olney's Exceptions at 3).

The Board's decision did not discuss the study referred to (Vol. 139, Tab 12 and Vol. 152 [Stegink VI–B at 22–25]).[23] However, Dr. Olney's statement that the "glu + aspartame meal caused GLU/ASP blood levels in *some* individuals to rise nearly twice as high as those induced by glu alone" (emphasis added) presents a one-sided view of the data. In this study, the addition of 50 mg/kg MSG alone resulted in a mean elevation in plasma GLU + ASP from a fasting level of 4.4 ± 1.2 μmol/dl to a peak of 21.0 ± 7.1 μmol/dl. The further addition of 34 mg/kg aspartame resulted in a mean level of 25.7 ± 10.5μmol/dl, which was not different, in terms of statistical significance, from the mean level reached with MSG alone (vol. 139, Tab 12 and Vol. 152 (Stegink VI–B at 24)). Singling out those individual subjects who did show an increase in plasma levels (over MSG alone) after receiving both compounds results, in my opinion, in a scientifically incorrect interpretation of the data. Plasma level data such as this almost always show a certain degree variation between subjects and even in the same subject: this is why hypotheses are accepted or rejected using mean values, standard errors, and statistical methods. Based on mean values obtained in this study, aspartame did not have a significant effect. Citing results only for the individuals who fell on one side of the mean severely biases presentation of a study's findings. In fact, there were some subjects in this study which had *lower* GLU + ASP levels with the combination than with MSG alone, but one would *not* want to conclude from this that aspartame antagonizes (i.e., counteracts) the effect of MSG.[24]

Finally, Dr. Olney has cited data showing that a given oral dose of GLU in young animals produces higher plasma GLU/ASP levels than does the same dose on adult animals. He then analogizes to humans and suggests that children will have higher plasma levels than adults after ingestion of aspartame in conjunction with MSG (Olney's Exceptions at 3).

There are two answers to this point. First, the animal data in the literature are inconsistent. Although some studies do show that plasma GLU/ASP levels are higher in immature animals as compared to adult animals given an equal oral load of GLU or ASP (Vol. 126, Tab 15 [Stegink et al., "Comparative Metabolism of Glutamate in the Mouse, Monkey and Man" in Filer, Jr., *supra*, page 85 +]; Vol. 138, Tab 7 (Oppermann and Ranney, *Journal of Environmental Pathology and Toxicology*, 2:987, 1979)), Dr. Olney's contention that this difference in plasma levels is "well established" is, in my view, not correct. In fact, there are some animal studies in the record, not mentioned by Dr. Olney, which do not show this effect (Vol. 123, Tab 14 (O'hara, et al., *Journal of Toxicology Science* 2:281, 1977]; Vol. 136, Tab 10 (Bizzi, et al. *Toxicology Letter* 1:123, 1977)).

More importantly, in *human* studies using *aspartame*, it was shown (under "high risk" conditions) that doses of up to 100 mg/kg were handled as well by 8–12 month old infants as by adults (regarding increases in plasma GLU + ASP). This study was cited by the Board, which stated: "This finding appears to refute any suggestion that aspartic acid might be metabolized less efficiently in infants than in adults." (Board's Decision at 33, referring to Vol. 152 (Stegink VI–B at 31)). I agree. There are also other human studies in the record, not mentioned in either the Board's decision or in Dr. Olney's exceptions, showing that infants (including those which were premature or of low birth weight) have the capability to metabolize dietary GLU and ASP as well as adults (cited in Vol. 152 (Stegink VI–B at 25–31)).

I therefore find, after a consideration of Dr. Olney's exceptions and the available data, that the proposed use of aspartame, either alone or together with glutamate, does not pose a risk of focal brain damage in humans. The data is convincing that that plasma GLU/ASP

[22] I.e., by using noncarbohydrate liquid vehicles, which would mimic the animal gavage studies by providing a bolus dose and thus allow for maximal increases in plasma GLU/ASP.

[23] As noted above, the Board did discuss a study in which the effect of aspartame on MSG-induced rise in plasma GLU/ASP was examined in human adults (no effect of aspartame was noted), although this study was not done under "high-risk" conditions, i.e., the vehicle was a hamburger-milkshake meal (Board's Decision at 32–33).

[24] It can of course be argued that aspartame might have a potentiating effect in some individuals, although a more likely explanation, in light of the fact that in other studies aspartame alone at this and higher doses had no effect on plasma GLU/ASP, is that the higher levels seen in some subjects receiving both compounds represents variability at different times in a single subject's response to MSG. Whatever the explanation, however, the conclusion which must be drawn from this study is that aspartame did not cause a statistically significant potentiation of the effect of MSG.

It might also be noted that the highest plasma GLU + ASP level reached by an individual in this study was 39.6 μmol/dl, which is still well below the toxic threshold as determined above.

levels in human adults receiving unusually large doses of aspartame remained within normal after eating limits, far below the lowest level even suspected of being neurotoxic. Moreover, the available data in human infants strongly suggest that this group handles loads of aspartame, GLU and ASP as well as adults. The lack of significant potentiation of the effects of MSG (on plasma GLU/ASP levels) by aspartame, as shown in adults under "high risk" conditions, provides further evidence of aspartame's safety when consumed with MSG. The addition of aspartame to the food supply, therefore, should not create any additional risk of focal brain lesions in children. I find that Dr. Olney's proposed study in children is unnecessary.[25]

e. *Possible adverse effects at subtoxic levels.* Dr. Olney has also cited animal studies (Vol. 125, Tab 66 (Olney, et al., *Brain Research* 112:420, 1976); Vol. 125, Tab 55 (Terry, et al., *Federal Proceedings* 36:364, 1977)) which have purportedly shown that doses of MSG that are subtoxic, i.e., below those needed to produce focal brain lesions, produced acute changes in plasma hormone levels (presumably via excitatory effects on hypothalamic neurons which control pituitary hormone secretion) and that a study with aspartame + MSG, involving the measurement of neuroendocrine function, should be performed in children for this reason also (Olney's Exceptions at 4, 6).

I disagree. As stated in the Board's decision (pp. 30–31), the hormone level changes noted in these studies were within the range of normal fluctuation, and may "have reflected no more than a normal circadian or ultradian periodicity of (hormone) release," and two other research groups were not able to replicate these findings (Vol. 125, Tab 68 (Yonetani and Matsuzawa, *Toxicology Letter* 1:207, 1977); Vol. 137, Tab 25 (Nemeroff et al., *Brain Research* 156:198, 1978)). Moreover, there was no proof in the "positive" studies that the doses used (1000 mg/kg s.c. or i.p. in adult rats) did not cause hypothalamic lesions. The Board thus concluded that "endocrine disorders are induced by MSG only when this substance is administered in amounts large enough to cause identifiable hypothalamic lesions" (Board's Decision at 31). More importantly, no endocrine toxicity due to *aspartame* at subneurotoxic doses has been reported in animals.

I therefore conclude that, as with the issue of focal brain lesions, aspartame would not pose an additional risk to children of neuroendocrine changes, and that Dr. Olney's proposed study is unnecessary.

f. *Other exceptions.* (1) The Board noted that the record contained one apparent exception to its general statement that no lesions had been observed in animals as a result of the voluntary consumption of GLU or ASP by mixing the test compound with the animal's regular food. The one exception occurred in a study in which 10 weanling mice were offered concentrated solutions of either GLU or GLU + ASP + aspartame after having been deprived of water overnight. All 10 mice developed lesions (Board's Decision at 27, referring to Olney, Vol. 157, Tab 205).

The Bureau takes exception to categorizing this experiment as a valid model for voluntary dietary consumption (Bureau's Exceptions at 6–9), and I agree with the Bureau. These animals were water-deprived, and they drank a small amount of highly concentrated solution over a short period of time at doses known to induce lesions in weanling mice when administered by gavage. Thus, the experimental design was essentially no different from the previous gavage studies.[26]

Finally, although it may be argued that under some conditions human voluntary consumption of aspartame may mimic gavage dosing (i.e., individuals may drink large amounts of aspartame-sweetened beverage at one sitting), human studies performed under these conditions showed that plasma GLU/ASP levels were not substantially increased (Vol. 140, Tab 5 and Vol. 115, Section III).

(2) The Bureau has also taken exception to one statement, apparently made by the Board in passing, which may require clarification. The statement appears on page 29 of the Board's decision where, after discussing neuroendocrine disorders induced in rodents by *subcutaneous* injections of MSG, the Board suggested that "* * * it seems reasonable to assume that in the same species * * * administration of aspartame *by gavage* * * * (at a dose containing an equivalent amount of aspartic acid) * * * would have similar endocrine consequences" (emphasis added). The Bureau's concern is that the route of adminstration might significantly affect the plasma levels, and that dosing orally by gavage is likely to require a higher dose to produce the same effects as would a subcutaneous dose (Bureau's Exceptions at 9–10).

I agree with the Bureau that some clarification of the Board's statement would be helpful. The critical value is not the dose used, but the plasma GLU + ASP level reached after administration of that dose. Because it is possible that different routes of administration may affect resulting plasma levels, it would be necessary to test the Board's hypothesis which, as the Board itself noted, had not yet been done (Board's Decision at 29). I emphasize, however, that this point is raised for clarification purposes and in no way changes the Board's decision.

4. *Conclusion.* For the reasons stated above and in the Board's decision, I find that there is a reasonable certainty that the proposed use of aspartame, either alone or together with glutamate, will not cause focal brain lesions in man or other adverse effects on the neuroendocrine system.

V. Evidence on the Brain Tumor Issue

A. Introduction.

1. *Issue Presented.* The second major issue at the hearing was defined as follows:

> The question has been raised whether the ingestion of aspartame may induce brain neoplasms in the rat. From available evidence, what can be concluded in relation to this question? The objecting parties believe that available evidence suggests, without adequately ruling out, a possible association between aspartame ingestion and an increased incidence of brain neoplasms in the rat. The Bureau of Foods believes that available evidence does not show that ingestion of aspartame results in an increased incidence of brain neoplasms in the rat.

(44 FR at 31717). In layman's terms, neoplasms are tumors. Thus, stated in the context of the legal standard, the issue is whether the data establish that there is a reasonable certainty that aspartame does not cause brain tumors in laboratory rats.

2. *Background.* The brain tumor issue falls under the general category of

[25] Dr. Olney has requested, in the event aspartame is approved for marketing without requiring his proposed study in children, that the Board and myself jointly sign an affidavit stating that we consider such a study to be safe (Olney's Exceptions at 6). I decline to do so. My sole responsibility in this proceeding is to render a decision on the issues raised at the hearing, as defined in the July 1, 1979 **Federal Register** notice. This I have done. As for the Board, its responsibilities were fulfilled with the completion of the Initial Decision.

[26] Interestingly, another group of investigators have suggested that:

> * * * Apparently water-restricted weanling mice lose their ability to regulate subsequent drinking behavior, and consume hyperosmola solutions whose osmolarity and sweetness would be aversive to humans.

(Takasaki, et al., Searle's Reply, Vol. 161, Appendix at 1).

carcinogenicity in which the agency has long exercised its considerable expertise (see, e.g., Commissioner's Decision: Cyclamate, 45 FR 61474, Sept. 16, 1980; Commissioner's Decision: FD&C Red No. 2, 45 FR 6253, Jan. 25, 1980; Commissioner's Decision: Diethylstilbestrol (DES), 44 FR 54852, Sept. 21, 1979). To assess the carcinogenic potential of food additives, the Bureau of Foods requires chronic studies in two rodent species, usually the rat and the mouse (Tr./I/page 16, lines 23–25). Proof of safety must entail negative findings from both species because it is not known which specie is more similar to man. As noted in Section IV(C) above, it is the agency's practice, in the absence of more precise scientific knowledge, to adopt findings from the most sensative species in order to maximize protection of the public health.

In keeping with the Bureau's requirements, Searle submitted chronic feeding studies on aspartame for both the rat (E–33/34, Vols. 43–44; E–70, Vol.81) and the mouse (E–75, Vol. 82). Similar studies were performed on the breakdown product diketopiperazine (DKP), also in both species (E–77/78 in the rat, Vols. 89–90, and E–76 in the mouse, Vol. 88). Because the parties have agreed that the mouse data are negative, only the three rat studies were subject to the Board's review and are considered in this decision.

These three rat studies had the following designs:

a. *E–33/34* was a 104-week study on aspartame, with exposure beginning after weaning. Dose levels were 0, 1, 2, 4, and 6–8 g/dg body weight.

b. *E–70* was a two generation study with aspartame exposure *in utero*, during lactation, and then for 104 weeks. Dose levels were 0, 2 and 4 g/kg body weight.

c. *E–77/78* was a 115-week study on DKP, with exposure beginning after weaning, as in E–33/34. Dose levels used were 0, 0.75, 1.5 and 3.0 g/kg body weight.

In all three studies, the test animal used was the Charles River CD (Sprague-Dawley) albino rat.[27]

The agency has set forth the general principles of statistical and biological significance which guide the evaluation of carcinogenicity studies (45 FR at 61477–81). Based on these criteria, studies may be classified as: (a) Positive; (b) inconclusive but suggestive of a carcinogenic effect ("suggestive"); (c) negative; or (d) deficient (*id.* at 61481, col. 2). In the case of aspartame, the parties dispute the proper category into which the three rat studies should be placed.

3. *Positions of the parties.* Dr. Olney would classify E–33/34 as suggestive and E–70 as deficient, thereby concluding that Searle's petition should not be approved without further testing. The central thesis in Dr. Olney's position is that the spontaneous rate of brain tumors in Sprague-Dawley rats, as reported in the scientific literature, is significantly below the incidence of brain tumors found in both the *control* animals in E–70 and the *treated* animals in E–33/34. Dr. Olney also considers the data in E–33/34, on their own, to suggest a dose response and accelerated tumor onset, both indicators of possible carcinogencity.

The Bureau of Foods and Searle consider both aspartame rat studies to be negative, thereby justifying approval of the food additive petition. In response to Dr. Olney's concerns, they maintain that the incidence rates at issue in the aspartame studies represent normal levels of background spontaneous incidence, and that E–33/34 demonstrates neither a dose response nor early tumor onset.

4. *The Board's decision.* The Board agreed essentially with Dr. Olany that the background rate for spontaneous brain tumors in this strain of rat was very low, the Board finding the rate to be approximately 0.7% [28] (Board's Decision at 43–45). Given that determination, the Board dismissed the E–70 study as "bizarre" because the *control* group there showed a 3.5% incidence of brain tumors (*id.* at 47). Also based on its assessment of the background rate, the Board found that, regarding study E–33/34: "By itself, the 3.5% incidence of brain tumors (in the *treated* animals) gives cause for concern" (*id.* at 46). The Board's concern about E–33/34 was augmented by its agreement with Dr. Olney that the data suggested a dose response and that there was a high incidence of gliomas (primary brain tumors) at a relatively early age. Accordingly, the Board, like Dr. Olney, would also classify E–33/34 as a suggestive study and E–70 as a deficient one.

5. *Additional evidence.* After the Board issued its decision, Searley, as part of its exceptions, submitted a recently completed long-term study conducted on Wistar rats by the Japanese firm, Ajinomoto Co., Inc. (the Japanese study) (Searle's Exceptions, Appendix 2). The study tested aspartame as well as an aspartame-DKP mixture. Searle also submitted additional data on the spontaneous rate issue (Searle's Exceptions, Appendices 3 and 4), as did the Bureau of Foods (Bureau's Exceptions, Appendix 3).

Because this proceeding is intended to be a scientific inquiry aimed at evaluating the safety of aspartame using all the available evidence, I have considered these materials as evidence in this proceeding, acknowledging that neither the Board nor the participants to the hearing have commented on them. In so doing, I note that none of these additional materials have served as a central basis for my decision, but rather only confirm the large body of evidence presented at the hearing.

6. *Commissioner's decision:* With due respect to the Board, I disagree with its assessment of the background rate of spontaneous brain tumors in Charles River CD (Sprague-Dawley) rats, and, therefore, I also disagree with the Board's characterizations of studies E–70 and E–33/34, which characterizations, especially regarding E–70, were largely dependent on the background rate assessment. As is explained in more detail below, I agree with the Bureau of Foods that the incidence rates reported in the Searle studies fall within reasonably expected bounds of spontaneous incidence for the type of rat and study size used, and that the primary evaluation of these studies should be between the treated animals and their concurrent controls. Using this approach, I find that the data in E–33/34 do not suggest, in terms of biological significance, a dose-response relationship or early tumor onset. Accordingly, I conclude that the two aspartame studies reviewed by the Board are neither "bizarre" (E–70) nor even of major "concern" (E–33/34), but rather they are negative studies.

7. *Conduct of the studies.* Dr. Olney and Mr. Turner have questioned the manner in which the aspartame/DKP studies were conducted and their credibility and usefulness for meaningful interpretation. The Board considered these issues to be beyond the scope of its charge and declined to rule on them (Board's Decision at 6–8). Mr. Turner has taken exception to this decision by the Board and has requested that the Board be reconvened to consider these issues (Turner's Exceptions in their entirety). The conduct of the studies and Mr. Turner's request for a new hearing are discussed in detail in Section VI below.

[27] Sprague-Dawley is the general strain of rat used. Different commercial suppliers have developed their own colonies of Sprague-Dawley rats, and the Charles River Laboratories from Wilmington, Massachusetts is one such supplier. "CD" simply means caesarian-derived.

[28] The Board was not as conservative in its estimate as was Dr. Olney, who considered the background rate to be 0.15% (Tr./III/page 139, lines 6–23).

B. Background Rate for Spontaneous Brain Tumors in Charles River CD (Sprague-Dawley) Rats

1. *Overview.* As noted above, the cornerstone of the Board's decision is that the background rate for spontaneous tumors in Charles River CD (Sprague-Dawley) rats is very low, approximately 0.7% (Board's Decision at 43–45). Specifically, the Board cited on four studies which showed spontaneous brain tumor incidence rates of 0.09%, 0.6%, 0.7%, and 3.2%. The Board gave extra weight to the two studies showing 0.6% and 0.7% incidence rates because the rats in those studies were obtained from the same commercial source (Charles River Laboratories) as those used in the Searle studies. The Board gave less weight to the study showing a 3.2% incidence rate because the number of rats used in that study (125) was considered to be too small for a reliable determination of spontaneous tumor incidence (*id.*).

Both Searle and the Bureau of Foods have taken strong exception to this portion of the Board's opinion (Searle's Exceptions at 16–22 and Bureau's Exceptions at 24–32). In general, both Searle and the Bureau argue that the Board gave too much weight to the studies at the lower end of the spectrum and ignored additional studies in the administrative record which reported spontaneous incidence rates as high as 5%. Searle and the Bureau therefore conclude that the incidence rates reported in the Searle studies fall within the normal spontaneous range.

After a thorough review of the studies in the administrative record submitted on this subject, I conclude as follows: (1) No single study and no group of studies submitted in this proceeding are sufficient to stand alone as a definitive statement of the background rate for spontaneous brain tumors in this strain of rat; (2) although several studies cited by the Board do report spontaneous incidences in the area of 1% or lower, these studies are partially flawed and must be supplemented by other data presented at the hearing which reported incidence rates comparable to those in the Searle studies; [29] and, therefore: (3) the primary evaluation of the Searle studies should be on the basis of comparison with concurrent, not historical, control data.

Four factors seem to play a significant role in creating this spectrum of findings. The first is the variation that would be expected among tests run at different times and at different places by different people (Koestner Testimony, Tr./III/page 257, lines 21–25; see also MacKenzie and Garner, Vol. 134, Tab 20 at 1252–53).

A second factor is the size of the study population. The smaller the size of the test sample, the larger will be the variation associated with the estimated of the spontaneous incidence rate, and vice versa.

The third consideration is the methodology used, especially the meticulousness of the search. For example, studies in which animal organs are observed only by the naked eye are likely to turn up fewer tumors than would a study in which the animal organs are routinely examined under a microscope. Similarly, where more sections of the brain are examined, the chances are greater that tumors will be found, thereby increasing the tumor incidence reported (Tr./III/page 258, lines 1–9).

Finally, as the Board noted, the strain and commercial source of rat used are important because animals derived from different colonies may acquire different characteristics (Board's Decision at 45, citing MacKenzie and Garner, Vol. 134, Tab 20).

These four factors help explain why there are such varied results among the reported studies. As the Board noted, emphasizing different methodologies used:

> It is difficult to conclude from the archival literature which of various published figures most accurately reflects the "normal" (i.e., presumably non-toxogenic) incidence of brain tumors in the Sprague-Dawley rat strain. Several published reports are based on findings in rats that had been used in long-term studies designed to check the potential toxicity of a particular compound, or of irradiated foods. Other reports fail to state the protocol followed in examining the brain tumors: Gross-anatomical tumor identification only, or routine histological examination of each brain?

(Board's Decision at 43).[30] The published literature also varies considerably in terms of the study population size, the commercial source of rat used, and the time and place the data were collected.

These four factors also help explain why the Searle studies reported a wider range of incidence rates than reported in those studies relied on most heavily by the Board. First, the studies relied on by the Board were conducted at different laboratories than were Searle's studies. Indeed, the one background rate study in the record which was done by the same laboratory as were Searle's studies (at least in part) reported a higher incidence than did the studies relied on by the Board (Gart, et al. Vol. 154, Tab 7, Table 4, discussed below). Second, the test populations in the Searle studies tended to be smaller than in the studies relied on by the Board, thus increasing the variation observed in the spontaneous incidence rates. Third, in the Searle studies, a very detailed histopathological examination was performed (involving either 7 or 8 brain sections per animal) which increases the chances of detecting tumors. Finally, the Charles River rat used by Searle was not uniformly utilized in the reported literature relied upon by the Board (i.e., Mawdesley-Thomas and Newman study, discussed below).

Accordingly, I find that the spontaneous incidence rates in the Searle studies are consistent with the normal background rate, as determined from the data in the administrative record of this proceeding.

2. *Studies Relied Upon by the Board:* As noted above, the Board cited four studies in making its determination of the background rate for spontaneous brain tumors in Charles River CD (Sprague-Dawley) rats. These studies may be reviewed, as follows:

a. *Mawdesley-Thomas and Newman* (Vol. 135, Tab 18): This study reported 38 tumors (24 in males) in approximately 41,000 rats for an incidence of 0.09%. These rats were fed either a control diet on one of a variety of test compounds. The rats were of the general Sprague-Dawley strain but were not obtained from Charles River Laboratories.

Searle criticizes this study because, in a subsequent publication (Vol. 135, Tab, 19), the same authors reported that the incidence rate in this study was probably closer to 1% than 0.1% (Searle's Exceptions at 16–17). The Bureau criticizes this study for three reasons: (1) Because the histological examination was more limited than in the Searle studies; (2) because tumors were eliminated whenever they were suspected of being compound-related; and (3) because not all the slides were reviewed by the authors themselves (Bureau's Exceptions at 26–27).

I agree with Searle, the Bureau, and the authors themselves that the reported incidence of 0.09% is probably too low. The test population included both treated and control animals. The authors eliminated any tumors from the incidence count that were "suspected" of being compound related, but did not also eliminate the other "treated" animals as well (Vol. 135, Tab 18 at 108). This approach likely inflated the number

[29] This conclusion is further supported by the spontaneous rate materials submitted with Searle's and the Bureau's exceptions.

[30] Indeed, one Bureau witness suggested that virtually all the reported studies, whether they reported high or low spontaneous rates, have some methodological deficiencies (Tr./III/page 195, lines 7–11).

of tumor-free animals and lowered the reported spontaneous incidence rate. It therefore appears that the authors' subsequent statement, that the true spontaneous incidence rate among this group of animals was probably higher than originally reported, is correct.

b. *MacKenzie and Garner* (Vol. 134, Tab 20): This study reported three brain tumors in a two-year study conducted on 535 rats, for an incidence rate of 0.6%. The test animals included both those fed irradiated feed and those on a control diet. Although a breakdown by sex is not given for these three tumors, when the authors combined all the strains of rats tested, over two-thirds of spontaneous brain tumors were found in males (Vol. 134, Tab 20 at 1251, col. 1).

Searle criticizes this study because the authors themselves (at page 1252 state that their findings cannot be compared with others' because of differences in methodology and diagnostic criteria (Searle's Exceptions at 17). The Bureau makes only the general criticism, as it does with the remaining two studies relied on by the Board, that there is not enough detail about the methodology to enable a correct assessment of the thoroughness of the histological examination (Bureau's Exceptions at 27).

Although this study is clearly entitled to some weight, I believe that the Board overemphasized its importance. The main purpose of this publication was to compare spontaneous incidence rates in studies conducted at different laboratories and at different times. And, indeed, the authors reported significant differences. Although it is true that the specific incidence rate relied upon by the Board was based on rats derived from the same commercial source as were the rats in the Searle studies, commercial source in only one of several factors that can affect the incidence rate (see discussion in this very study at 1252, col. 2). Moreover, the authors state that "many small tumors" found in other studies would not be called neoplasms by them (id.), a practice which could have lowered the reported incidence rate.

c. *Fitzgerald, et al.* (Vol. 134, Tab 22): This study reported five brain tumors in 650 rats for an incidence of 0.7%. Once again, some of the test animals were fed test compounds while others were on a control diet. The authors reported that these tumors predominated in the males, although an exact breakdown by sex was not given.

There are two weaknesses in this reported study. First, the authors did not state how many brain sections were routinely examined microscopically. As noted above, less-than-meticulous searches could have the effect of lowering the reported spontaneous incidence rate. Second, the authors reported that animals were sacrificed at unspecified intervals (Vol. 134, Tab 22 at 265). Early deaths may also have helped lower the reported incidence.

d. *Thompson, et al.* (Vol. 134, Tab 18): This study reported four brain tumors in 125 rats for an incidence of 3.2%. The Board found, however, that "[t]he number of rats used in this study is too small for a reliable determination of spontaneous-tumor incidence" (Board's Decision at 44). Searle believes the Thompson data are nevertheless valid, arguing that smaller study populations tend to produce a wider variation in reported incidence rates (Searle's Exceptions at 17–18).

Both the Board and Searle make valid points that are not mutually exclusive. As noted above, it is true that small test populations lead to greater imprecision in estimating spontaneous incidence rates. For this reason, the Thompson study would not serve as a reliable indicator of the "true" spontaneous rate. However, when a study's test population is small, the *variation* in the observed incidence rate will be large, and the frequency of observing both high and low incidence rates will be increased. Thus, due to this increased variability, the incidence in the relatively small Thompson study (4/125, 3.2%) is acceptable for that size test population. When the Thompson data are added to the other three studies cited by the Board (.09% [38/41,000], .6% [3/535], .7% [5/650] and 3.2% [4/125]), the spectrum is not unlike that in the three control groups in the Searle studies, .8% (1/119) in E–33/34, 1.6% (2/123) in E–77/78, and 3.5% (4/115) in E–70. Inclusion of the Thompson study in this type of comparison is valid because Thompson's study size (125) is comparable to those in the Searle control groups (approximately 120 each).

Dr. Olney suggests that the 3.2% figure is too high because three of the four tumors were found in animals fed a diet of irradiated feed (Olney's Exceptions at 2). Dr. Olney's point is valid to the extent that it indicates a flaw in this study (i.e., using both "treated" and "control" animals), but it is a flaw common to all of the studies relied upon by the Board. Such flaws underscore the need to consider the truly "control data" described below.

3. *Other evidence.* In addition to these four studies cited by the Board, I also consider the following data to be relevant:

a. *Gart, et al.* (Vol. 154, Tab 7, Table 4). These data were collected by the National Cancer Institute ("NCI") from *control* animals used in the carcinogenesis bioassay program. The participating organizations were NCI and Hazelton Laboratories, the laboratory used by Searle for studies E–33/34 and E–70 (Tr./III/page 214, lines 14–24 and page 217, lines 11–16). The data were derived from Charles River CD (Sprague-Dawley) rats and showed an incidence rate for brain tumors of 2.2% (8/368) (Tr./III/page 197, lines 13–16).

As Dr. Olney points out, it is true that these data are reported only in tabular form without a detailed description of the methodologies used (see Tr./III/page 218, lines 1–6). Nevertheless, the fact that these data were all derived from control animals is sufficient to consider the information in this proceeding, especially because there is such an overall sparceness of truly "control" incidence data available in the record (see Tr./III/page 217, lines 2–5).

The spontaneous incidence of brain tumors reported by NCI (2.2%) is approximately triple the incidence reported by the MacKenzie, et al. and Fitzgerald, et al. studies relied on heavily by the Board. Significantly, these data all were derived from the same commercial source (Charles River) and were housed, at least in part, in the same laboratory (Hazelton) used by Searle. As noted above, these factors are known to affect reported spontaneous incidence rates (MacKenzie and Garner, Vol. 134, Tab 20 at 1253, cols. 1–2).

One direct comparison between the NCI data and Searle's control data is quite striking. If the controls from all three Searle studies are combined, the resulting incidence rate is very comparable to the NCI data for sample populations of nearly identical size: 2.0% (7/356) for combined Searle control data and 2.2% (8/368) for NCI control data (Tr./III/page 195, line 22—page 196, line 9 and Tr./III/page 197, lines 13–16).[31]

b. *Additional Data.* Other relevant non-aspartame studies reported incidence rates for *control* animals of 5% (2/40), 3.3% (2/60) (reported twice), 2% (8/400), 1.9% (7/368), 1.5% (13/876), and 0.5% (3/575). Moreover, all of these data were based on control animals and were obtained from the Charles River Laboratories, the same source used by Searle. The utility of these data is somewhat limited because the data were not available for the Board's consideration (Searle's Exceptions,

[31] A second, more confirmatory type of comparison is that NCI and Searle both reported a higher spontaneous occurrence of brain tumors in males than in females. This is consistent with the other reported studies.

Appendices 3 and 4; Bureau's Exceptions, Appendence 3), and because they report findings only in summary form without any detailed description of the test methods.[32] Nevertheless, this information tends to confirm my conclusions drawn from the data presented at the hearing and therefore may be considered as additional support for those conclusions.

As noted above, several of these reported brain tumor incidences were significantly higher than those reported by the Board, with sizable studies reporting incidences of 1.5%, 1.9% and 2.0%. Moreover, one particular study illustrates quite well the point that small studies are subject to wider variation in reported spontaneous incidences (both higher and lower) than are larger studies. These data, which showed an overall spontaneous incidence rate for brain tumors of 2.0% (8/400) (Searle's Exceptions, Appendix 3) was actually broken down into the following four separate control groups that were run concurrently: 4% (4/100); 3% (3/100); 1% (1/100); and 0% (0/100). This variation is remarkably similar to that seen in the control data from the three Searle studies: 3.5% (4/115) in E-70; 1.6% (2/123) in E-77/78; and 0.8% (1/119) in E-33/34.

3. *Conclusions on spontaneous rate.* Based on the above analysis, I find that the Board's conclusion that the background rate for spontaneous brain tumors in Charles River CD (Sprague-Dawley) rats was approximately 0.7% was unduly low. Although it is true that three studies relied on by the Board showed tumor incidences of less than 1%, these studies each had some flaws, or discussed above, and other credible data reported spontaneous incidence rates for brain tumors in the mid-1% and 2% range. Also important are additional data derived from relatively small studies (comparable to E-70 controls) reporting spontaneous incidences in the 3% range or even higher, which results may be attributed to the variation that may reasonably be expected from studies with small sample populations. I therefore find the historical control data to be consistent with the rates reported in the Searle studies, and therefore the safety of aspartame should be evaluated on the basis of comparison with concurrent controls.

C. Studies on Aspartame and DKP

1. *General principles.* It is generally accepted that "the first and foremost comparison of a treated group is to its concurrent controls" (Gart, et al., Vol. 155, Tab 7 at 962). As noted above, the agency has set forth general principles of statistical and biological significance which guide the evaluation of carcinogenicity studies (45 FR 61477-81). Factors usually considered are: "the methodology of the study involved, the existence of a dose response relationship, the rarity of tumors, and the presence of similar results in other studies" (*id.* at 61478, col. 2). Other relevant considerations include the tumor incidence in treated animals versus concurrent controls (Tr./III/page 190, lines 13-17), any acceleration of tumor onset (Tr./III/page 191, lines 1-2; Tr./III/page 250, lines 14-15), and study size (45 FR at 61482).

These criteria will be discussed below in the context of the Searle studies in which they arise.

2. *E-33/34 (Vols. 43-44)* [33]—a. *Study Design.* This study was conducted on Charles River CD (Sprague-Dawley) rats using aspartame as the test compound. Four treatment groups, consisting of 40 rats per sex per group, were fed aspartame as part of their regular diets at dosage levels of 1, 2, 4, and 6-8 g/kg body weight/day, respectively, for a period of 2 years, beginning after weaning at 4 weeks of age. A control group of 60 rats per sex were fed the same diet without the aspartame. At the conclusion of the 2-year period, all the surviving test animals were sacrificed, and their brains (as well as other organs) were examined histologically. Eight coronal sections were eventually examined from each animal's brain.

b. *Study Results.* Examination of the brains revealed a total of 13 tumors, one in the control group and 12 spread among the four treatment groups (Board at 40-41). The breakdown by sex and dosage level is as follows:

Group	Males	Females
Control	1/59	0/59
1 g/kg	2/36	2/40
2 g/kg	1/40	0/40
4 g/kg	4/40	1/40
6-8 g/kg	0/39	2/38

The numerators shown above represent the figures found by the Board (*Id.*). The denominators represent the total number of animals at risk which were verified by UAREP (Vol. 111 at 391, Table IV-20).[34] Most of these tumors were gliomas, although one tumor in the high dose female group was diagnosed by the Board as a medulloblastoma (Board's Decision at 40-41).

Before analyzing the data, it is necessary to resolve two disputes about exactly how many tumors were found among the test animals. The controversy is due to variations in tumor count among the several persons or groups who viewed the slides: Dr. Innes on behalf of Searle,[35] the UAREP Committee, and the Board.

(1) *Male control group:* In this category, Dr. Innes reported no tumors, while UAREP and the Board each reported one tumor. Dr. Olney took exception to this finding by the Board, asserting that the Board's diagnosis, "most likely a metastatic carcinoma," meant that it was not a primary brain tumor (Olney's Exceptions at 2). The Bureau and Searle each counted this tumor, relying on UAREP's diagnosis that the tumor was an astrocytoma (Bureau's Exceptions at 14; Searle's Exceptions at 26). Searle also asserts that, in the absence of carcinomas found in other organs, the tumor could not have been metastatic [36] (Searle's Exceptions at 26).

I agree with the Board, UAREP, the Bureau and Searle that this tumor should be counted, for several reasons. First, tumor findings by a group with UAREP's expertise are entitled to considerable weight, especially positive findings, which are much more difficult to discount than negative ones. Second, although the Board "tentatively" diagnosed the tumor as metastatic (it used the qualifying words "most likely"), the Board did include this tumor in its control group count (0.8% vs. 0.0%), something the Board should not have done had the tumor been clearly metastatic. Finally, even by including this tumor, the control incidence is still only 0.8%, which lies at the lower end of the spontaneous incidence spectrum (see Subsection B above). Accordingly, the weight of the evidence strongly

[32] The one exception was the study reporting a 5% incidence (Ulland, et al., Vol. 155, Tab 4), to which neither shortcoming applies.

[33] This study is reported at several different places in the administrative record. The original report is designated as E-33/34 and is found in volumes 43 and 44. That report is supplemented by a pathology report performed for Searle, designated as E-87 or the "Innes Report," and found in volume 98. Both reports were subsequently reviewed by UAREP in Vol. 110, pages 5-14, Vol. 111, pages 256-457, and Vol. 112, pages 833-45, as part of the authentication procedure described in Section I above.

[34] Decreasing the denominators for this reason makes the data base more accurate and reliable. No appreciable effect is seen in the statistical evaluations as a result of this change. Statistical results reported in this decision are based on the data base listed above and therefore vary slightly from the results reported by the Bureau of Foods.

[35] Dr. Innes' review superseded an earlier review conducted by Experimental Pathology Laboratories (EPL), also on behalf of Searle. Dr. Innes' review was based on a more detailed sectioning of the test animals' brains than was EPL's review (see UAREP Report, Vol. 112 at 833-45).

[36] The term "metastatic" means that the tumor originated at another site and then transferred to the brain.

favors treating this tumor as a primary brain tumor.

(2) *1 g/kg male group:* In this category, Dr. Innes and the Board reported two tumors while UAREP reported only one tumor. Because it is more likely that a qualified pathologist might miss one tumor than incorrectly diagnose a non-tumor as a tumor, I agree with Dr. Innes and the Board that two tumors should be counted in this group.

c. *Analysis*— (1) *Board's decision.* The Board considered this study to be suggestive of causing brain tumors, for three reasons: (1) The increased incidence of brain tumors in aspartame-fed rats (reported as 3.75%) when compared to historical controls; (2) a possible dose-response, as seen by comparing the incidences in the lower two treatment groups combined (3.1%) with that of the upper two treatment groups combined (4.3%); and (3) the prevalence of early-occurring gliomas, two allegedly in the first year of life and three in the second year (Board's Decision at 41 and 46–47).

(2) *Positions of the parties.* Both Searle and the Bureau filed extensive exceptions to this portion of the Board's decision (Searle's Exceptions at 22–29 and Bureau's Exceptions at 14–22 and 32–35). Principally, they claim: (1) Appropriate statistical analyses show no significant increase in tumor incidence in the treated animals when compared to concurrent controls; (2) the Board's method for evaluating a dose response was not valid, and more appropriate tests show no dose response; and (3) the Board made factual errors in noting the time of death for certain rats.

(3) *Study evaluation.* In evaluating this study, data for the males and females have been analyzed separately. This is because the treated males lived longer than their concurrent control counterparts, and the treated females died sooner (Tr./III/page 323, line 19 to page 233, line 11). Moreover, the males produced more tumors than the females, which is consistent with the results in the background studies discussed in Subsection B above, especially, Gart, et al (Vol. 154, Tab 7 at Table 4).[37] Using this approach, study E–33/34 may be evaluated as follows:

[37] One acknowledged inconsistency with this Decision is that the background rate issue has been analyzed by combining the sexes while the comparisons to concurrent controls is being analyzed with males and females separately. Sexes were combined in the background rate analysis because the reported studies relied on by the Board did not give a breakdown by sex. However, the Searle studies do give such a breakdown, and for the reasons stated in the text, a separate analysis for males and females is appropriate (*cf.* 45 FR at 61486, col. 2 and 61489, col. 2).

(a) *Tumor incidence.* The tumor incidences found, stated in percentage form, are as follows:

Group (grams per kilogram)	Males (percent)	Females (percent)
Control	1.7	0.0
1	5.6	5.0
2	2.5	0.0
4	10.0	2.5
6–8	0.0	5.3

Tumor incidence has been analyzed statistically by the Bureau of Foods using the Fishers Exact test, one-tailed (Tr./III/page 198, lines 21–22). This test calculates the probability of obtaining the observed or more extreme results, if there was no difference between the treated and control groups. The smaller the calculated probabilities, the greater the likelihood that the results are not due to chance alone, but may be treatment-related (see 45 FR at 61478, col. 1).

The P values from the Fishers Exact test are as follows:

Group (grams per kilogram)	Males	Females
1	0.32	0.16
2	0.65	1.00
4	0.08	0.40
6–8	1.00	0.15

Although at least one P value (P = .08, 4 g/kg males) may in some cases be cause for concern, it is not a cause for concern here because the finding is not repeated in any other dosage group because the males did not exhibit a dose response. As a general rule:

> The factors to be considered in determining biological significance [including lack of a dose response] may increase or *decrease* that confidence [that may otherwise be placed in low P values].

(45 FR at 61481, col. 1 (emphasis added); *cf.* 45 FR at 61478, col. 3). I therefore find that the tumor incidence analysis does not indicate biologically significant findings.

(b) *Dose response.* The Board concluded that the data suggest a dose-response relationship (Board's Decision at 46–47). The Board reached this conclusion by combining the data as follows, as advocated by Dr. Olney (Tr./III/page 126, lines 12–16):

Lower two groups combined	Upper two groups combined (percent)
Both sexes combined 3.1 percent	4.3

Although the Board did not separate the animals by sex, similar results are found if this is done:

Lower two groups combined (percent)	Upper two groups combined (percent)
Males 3.9	5.0
Females 2.5	3.8

Both the Bureau and Searle take exception to the Board's conclusion on dose-response, asserting: (1) That the dosage levels should not be combined in this fashion, and (2) the data do not produce biologically significant results using appropriate analyses (Searle's Exceptions at 24–26; Bureau's Exceptions at 21–22).

I find that the statistical trend tests utilized by the Bureau of Foods (Cox and Breslow tests), which simultaneously consider all dose levels, are more appropriate for analyzing these data than is the method used by Dr. Olney and the Board. These trend tests are especially useful for the data in E–33/34 because both tests account for differing survival times between the treated and control groups of each sex and make the appropriate adjustments. The Breslow test also gives extra weight to tumors which are observed early (Tr./III/page 200, line 23—page 202, line 3). The Cox and Breslow tests for trends yield the following P values:

	Males	Females
Cox	0.44	0.04
Breslow	0.47	0.02

The P values raising obvious concern are those for the females. The Bureau argues that these values are not biologically significant because they are largely dependent on a single medulloblastoma (found in one of the high dose females at 12 weeks) which, accordingly to the Bureau, was probably not caused by aspartame (Bureau's Exceptions at 32–35; see also Searle's Exceptions at 27–29). If the medulloblastoma is excluded from these analyses, the P values become 0.15 for the Cox test and 0.13 for the Breslow test.

The crux of the Bureau's argument is that, because the medulloblastoma caused death at age 12 weeks, the tumor most likely originated in embryonic brain tissue before aspartame was ever administrated. (In E–33/34, ingestion of aspartame began after weaning, at four weeks of age.) The Bureau believes its hypothesis is confirmed because of the failure to detect any additional medulloblastomas either in this study or in E–70, where the animals were exposed to aspartame *in utero*, during

lactation and then for 104 weeks. Searle agrees with the Bureau on these points.

Whenever a single tumor has such a large impact on observed probabilities, caution should be used in evaluating the results from any statistical test. Under the unique facts presented here, I agree with the Bureau of Foods that the results from the Cox and Breslow tests should not be considered biologically significant. This tumor likely originated in embryonic tissue before aspartame was administered, and the absence of additional medulloblastomas in this study or in E–70 support this conclusion (Tr./III/page 204, lines 2–19 and page 262, line 23—page 263, line 11). I therefore conclude that E–33/34 does not exhibit a dose response.

(c) *Time of tumor onset:* The Board was also concerned about what it perceived as a "high incidence of gliomas at a relatively early age: 5 rats died with glioma before completing the second year of life" (Board's Decision at 46). According to the Board, these animals died at weeks 8, 16, 66, 84 and 100 *(id.)*.

Both the Bureau and Searle claim that the Board made a factual error with respect to the two animals which allegedly died with a glioma at age 8 and 16 weeks. Searle and the Bureau assert that the "8 week" animal really died at 68 or 69 weeks, and the "16 week" animal really died at 76 weeks (Searle's Exceptions at 23 and Bureau's Exceptions at 15). Thus, the dispute here is whether these animals died early in their first year or well into their second year of life.

After a review of the relevant documents, I agree with Searle and the Bureau that the Board did indeed make two factual errors. In actuality, these animals died at approximately 69 and 76 weeks, respectively (UAREP, Vol. 111 at 403 [Animal No. 83–766] and 396 (Animal No. 83–837)).

The corrected figures are certainly less dramatic; all animals with gliomas died either during the second year of life or were sacrificed at the conclusion of the study. Moreover, none of the gliomas were confirmed as being the cause of death. As Dr. Koestner testified at the hearing:

> * * * these animals just happened to die from a non-tumor related cause and histological examination of the brain reveals an unexpected microtumor which eventually would have shown up as a grossly detectable neoplasm had the animal been permitted to live.

(Tr./III/page 255, lines 18–22; see also Tr./III/page 225, lines 5–11). Accordingly, I find that there are no biologically significant findings of early tumor onset.

(3) *Conclusion on E–33/34:* For the reasons stated above, I consider E–33/34 to be a negative study.

3. *Study E–70* (Vol. 80) [38]—a. *Study design.* This study was also conducted on Charles River CD (Sprague-Dawley) albino rats using aspartame as the test compound. The protocol differed from E–33/34 in that the treated animals were esposed to aspartame, through their mother's diets, both *in utero* and during lactation, and then for 104 weeks as part of their own diets. The Bureau requested Searle to perform a study with aspartame exposure beginning at conception because of the known sensitivity of the fetal or infant rodent to toxic effects from high doses of glutamic acid and aspartic acid (Tr./III/page 205, lines 18–24) (see generally Section IV(C) above).

E–70 used two dosage levels, 2 and 4 g/kg body weight/day, in groups of 40 animals per sex. A control group originally consisting of 60 animals per sex was also used. A treatment group comparable to the highest dose in the E–33/34 study (6–8 g/kg) could not be used because of exhibited non-specific toxic effects in fetal tissue caused by decreased food consumption in the mother (Tr./III/page 206, lines 11–24).

Test animals were necropsied at the time of death, or at 104 weeks after weaning, whichever occurred first. Eight brains sections per animal were examined histologically.

b. *Study results.* The tumor count [39] and the number of animals at risk (as verified by UAREP [Vol. 111, page 559, Table V–20]) are as follows:

Grams per kilogram	Males	Females
Controls	3/58	1/57
2	2/36	1/39
4	1/40	1/40

c. *Analysis*—(1) *The Board's Decision:* As noted above, the Board discounted completely the results from this study, calling them "bizarre" because the incidence of brain tumors in control animals, 3.5% (4/115) was considered completely out of line with the background rate in historical controls (Board's Decision at 47). The Board also found that the brain tumor incidence of the aspartame-treated groups combined, 2.5% (4/157), was "well above the normative figures" (*id.*). Finally, the Board criticized the study's size, stating: "this critically important study should have included a larger number of experimental animals" (*id.*).

(2) *Positions of the parties.* The Bureau and Searle have taken exception to this portion of Board's decision also (Searle's Exceptions at 29–30 and Bureau's Exceptions at 35–36). They argue that the incidence rates are consistent with a correct assessment of the historical control data, and that this study, evaluated on its own, showed neither statistically nor biologically significant findings. Dr. Olney agrees with the Board that this study is deficient, due to his comparison to the historical control data (Tr./III/page 154, lines 1–3).

(3) *Evaluation of study.* As explained in detail in Subsection B above, I disagree with the Board's determination of the background rate for spontaneous brain tumors in Charles River CD (Sprague-Dawley) rats and, accordingly, I disagree with the Board's dismissing the results of this study.

Based on comparisons with concurrent controls, it is clear that this is a negative study. As Dr. Olney admitted at the hearing:

> As one can see, there is no significant difference between the incidence of brain tumors between control and experimental animals in the second aspartame study.

(Tr./III/page 153, line 24–page 154, line 1). This conclusion was confirmed by statistical analyses performed by the Bureau of Foods (Tr./III/page 207, line 2–page 208, line 19). Because of the *in utero* exposure, the results of this study alleviate the concern raised by Dr. Olney of increased risk to children in terms of brain tumors (Koestner, Vol. 152, Section XI at 10).

One additional point which needs to be addressed briefly is study size. As noted above, the Board suggested that this study should have included more animals. The protocol used in E–70 called for 40 rats/sex in each of the two treated groups and 60 rats/sex in the control group. Searle has demonstrated that this allocation of treated and control animals is comparable to the Bureau's *current* allocation standard (50 animals/sex for both treated and control groups) in terms of its ability to detect an increased tumor rate (Searle's Exceptions at 40, Chart 1). Thus, I do not share the Board's concern about study size.

[38] Like E–33/34, this study is reported in its original form (Vol. 80), in a pathology report by Dr. Innes (E–87, Vol. 98), and in review form by UAREP (Vol. 110 at 5–15; Vol. 111 at 458–577; and Vol. 112 at 833–45).

[39] Although the Board reported only two tumors in the 2 g/kg group (both sexes combined (Board's Decision at 42)), Dr. Innes and UAREP each reported three tumors, two in the males and one in the females (Vol. 112 at 838, Table 9–1). The omission of the third tumor may have been an oversight by the Board. All three have been counted here.

(d) *Conclusion on E–70.* For the reasons stated above, I consider E–70 to be a negative study.

4. *E–77/78* (Vols. 89–90) [40]—a. *Study Design.* This study differed from E–33/34 and E–70 in that the test compound used was diketopiperazine (DKP), a breakdown product of aspartame (less than 2%) (Vol. 112 at 30–31). Charles River CD (Sprague-Dawley) albino rats were also used in this study. Three treatment groups, consisting of 36 rats per sex per group, were fed DKP as part of their regular diets at dosage levels of 0.75, 1.5 and 3.0 g/kg body weight/day for 115 weeks, beginning after weaning. A control group of 72 animals per sex was fed the same diet without DKP. Test animals were sacrificed at the end of the dosing period, and their brains (seven sections per animal) were examined histologically.

b. *Study results.* The Board reported the following results and offered the following evaluation:

> In the E–77/78 study concerning the diketopiperazine of aspartame 5 tumors were recorded: 2 in the control group of 123 rats (1.6%), and the remaining 3 among the 198 animals of the three experimental groups (1.5%). Two of the 5 gliomas could have been noted on gross inspection of the brain.
>
> This study shows no difference between experimental and control groups, and the recorded percentages fall within the high range of normal incidence reported from various normative studies.
>
> (Board's Decision at 43)

c. *Analysis of and Conclusion on E–77/78.* None of the hearing participants challenge this interpretation of the data. Accordingly, I agree with the Board that E–77/78 is a negative study.

5. *Additional evidence: The Japanese study* (Searle's Exceptions, Appendix 2). This study was conducted only recently by the Japanese firm Ajinomoto Co., Inc., and concluded after the Board issued its decision. A preliminary report was submitted by Searle as part of its exceptions. I have considered this study as evidence in this proceeding, acknowledging that neither the Board nor the hearing participants have formally commented on it.

The preliminary report at (page 1) contains the following summary:

> The brain tumorgenicity of aspartame (APM) and of its diketopiperazine (DKP) was studied in 860 SLC Wistar rats. APM at dietary levels of 1 g/kg, 2 g/kg, 4 g/kg or AMP+DKP (3:1) 4 g/kg was fed for 104 weeks. One atypical astrocytoma was found in a control rat and 2 astrocytomas, 2 oligodendrogliomas and 1 ependymoma were scattered among the 4 test groups. There was no significant difference in the incidence of brain tumors between control and test groups. It is concluded that neither APM nor DKP caused brain tumors in rats in this study.

Taking the available information at face value, this appears to be a negative study in terms of brain tumors. Without a review of the Bureau of Foods, however, as well as by other interested parties, I do not believe it proper to base approval of aspartame on this study's results. Nor is such a course necessary in this instance. The three chronic studies discussed above (E–33/34, E–70, and E–77/78) are sufficient for me to make a final determination on the safety of aspartame in terms of its potential for brain tumors in rats. However, because the Japanese study suggests that aspartame does not cause brain tumors in a second strain of rat, the SLC Wistar rat, this study provides additional support for my conclusion on the brain tumor issue.

D. Conclusion on Brain Tumor Issue

For all the reasons stated above, I conclude that the available data, taken as a whole, establish that there is a reasonable certainty that aspartame and DKP do not cause brain tumors in laboratory rats. This conclusion is based on studies E–33/34, E–70, and E–77/78, all of which were considered at the hearing. Additional support for this conclusion is found in the Japanese study, submitted by Searle after the Board issued its decision. Accordingly, under the act's general safety clause, I find that the available data establish the safety of aspartame, in terms of brain tumors, for its proposed use.

VI. Mr. Turner's Appeal

Mr. Turner and Dr. Olney have repeatedly challenged the quality of data produced in Searle's animal studies. Indeed, Mr. Turner has petitioned for the Public Board of Inquiry to be reconvened because of the Board's refusal to consider what he called the "scientific validity" of the studies [41] (Vol. 153, Tab 187; see also Turner's Exceptions).

The Board disagreed with Mr. Turner's characterization that it failed to consider the "scientific validity" of the studies, asserting that the Board "did not exclude evidence relating to the quality or appropriateness of the experimental design of the studies or the scientific conclusions that can validly be drawn from the studies" (Board's Decision at 7). What the Board did decline to do was to "undertake a retrospective quality inspection of all the studies presented to it" which the Board considered had already been accomplished by UAREP and FDA (*id.*). Quite clearly, the Board considered its charge, as delineated in the June 1, 1979 **Federal Register** statement, to relate only to interpretation of the data and not conduct of the studies.

Both Searle and the Bureau agreed with the Board's ruling on Mr. Turner's appeal (Searle's Reply to Turner's Appeal, Vol. 157, Tab 200 and Searle's Reply to Turner's Exceptions; Bureau's Reply to Turner's Appeal, Vol. 157, Tab 208; and Bureau's Reply to Turner's Exceptions).

I believe the problem is partly one of semantics, as the phrase "scientific validity" may have several different meanings. The Board understood Mr. Turner to mean that it should redo UAREP's work which was to authenticate the data (i.e., make sure that the studies were actually conducted). Clearly, the board was correct in not attempting to repeat UAREP's work. The Board, in turn, uses the term "scientific validity" to mean the conclusions that can be drawn from the data presented, including study design. These conclusions were clearly within the Board's domain, and it was based on these considerations that the Board reached its ultimate findings. There is a third area, however, that lies somewhere between those two. This relates to the *manner* in which the studies were conducted. Even if the studies were not fraudulent, that does not necessarily mean that they were well conducted. A non-fraudulent study might be conducted in such a poor manner that its results would not be considered meaningful (*cf.* 45 FR at 61478, col. 2). As then FDA Chief Counsel Richard A. Merrill wrote to Mr. Turner on February 24, 1977, questions regarding the "execution of the studies" could be raised at the public hearing (Attachment No. 1 to Turner's Appeal, Vol. 153, Tab 187).

I conclude, however, that a new hearing need not be held. With one exception discussed below, Mr. Turner has not stated with particularity any deficiencies in the conduct of any of the pertinent studies which he believes, either alone or collectively, are sufficiently serious as to warrant a

[40] This study was not reviewed by Dr. Innes. Neither was it reviewed by UAREP, although a similar authentication was performed by the agency (vol. 151, Tab 167).

[41] Mr. Turner's full prayer for relief included:

1. An order directing the Board to reconvene and consider whether certain studies have been validated;

2. An order directing an additional Board or other public investigatory body to validate these studies; and

3. Withholding of aspartame's approval until such validation is completed.

(Vol. 153, Tab 187 at 24–25)

study's invalidation.[42] Rather, Mr. Turner's (and Dr. Olney's) main criticisms appear to be mere speculations which fail to raise any genuine issue of material fact.

For example, Mr. Turner and Dr. Olney rely heavily on the 1976 Congressional testimony of then Commissioner Alexander M. Schmidt who characterized Searle's animal laboratory practices as "sloppy" (Tr./III/page 129, lines 1–4). That testimony was based on findings of an FDA investigation of two of Searle's *drug* studies which only peripherally concerned aspartame. The relevance of this investigation to the aspartame proceeding is that it triggered the detailed audit conducted by UAREP and the agency, and therefore, for the purposes of this proceeding the drug study investigation was superceded by the UAREP/FDA audit. Nevertheless, based on the "sloppy" laboratory practices theory, Dr. Olney attributed the slightly higher incidence of brain tumors found in the E–70 control animals over concurrently treated animals to a hypothetical mix-up that may have occurred between the control and treated groups (Olney's Pre-Hearing Position Paper, Vol. 151, Tab 160, Part III at 15). The speculation inherent in this allegation was evidenced at the hearing when, as the issue of the higher control incidence in the E–70 animals arose, the following exchange took place:

> Dr. Spitznagel [Consultant to Dr. Olney]: Our only comment on that is we have our suspicions, mainly that some of the controls were actually treated.
>
> Dr. Bussey [Consultant to Searle]: Do you have evidence to that effect?
>
> Dr. Spitznagel: No, we really don't other than the assertion of the Commissioner of FDA.
>
> (Tr./III/page 242, lines 20–25).

The only specific allegation by either Mr. Turner or Dr. Olney relates to the E–77/78 carcinogenicity study conducted on DKP. Dr. Olney cites a Bureau of Foods report that raises the possibility that the DKP-containing feed may not have been homogeneous (Report from Bureau of Foods' Task Force, September 29, 1979, pages 10–11, Volume 151, Tab 167). Dr. Olney's point here is that the non-homogeneous feed may have resulted in the "treated" animals' selectively not eating the DKP.

The Bureau of Foods' documents at issue relate to the authentication review conducted by FDA.[43] The pertinent documents were placed into the record by the Bureau shortly after the hearing, at the request of Dr. Olney and Mr. Turner (Volume 151, Tab 167). The documents include portions of FDA's on/site inspection report of Searle as well as a Task Force memorandum interpreting and commenting on that report.

The agency's investigation culminated in a Bureau Task Force Report which thoroughly discussed the homogeneity issue. The Task Force concluded that, although the homogeneity issue could not be conclusively resolved, no serious problems were encountered which would invalidate the study. The remedy advocated by the Bureau, and adopted by the agency, was to notify Searle by letter of laboratory practices which should be corrected in the future (see Memorandum for the Files, dated September 26, 1977 prepared by Taylor M. Quinn, and draft letter to Searle from Commissioner Kennedy (undated), both in Vol. 151, Tab 167).

Dr. Olney's one piece of "hard evidence" was a photograph of a feed mixture showing DKP particles larger than that of the feed, so that the animals in the treated group might have discriminated in favor of the smaller non-DKP particles (photograph attached to Olney letter of February 6, 1980, Vol. 151, Tab 165).

I agree with the Bureau that the evidence is not sufficient to invalidate this study. The photograph in question was taken by a sample prepared especially for stability testing purposes, not feeding purposes. As the Task Force wrote: "it could not be determined whether these samples were representative of the diets fed to the rats, since the batches were made up specifically for this analysis and were made in smaller amounts" (Vol. 151, Tab 167, Task Force Report, Appendix A at 10–11). Thus, Dr. Olney's allegation here also appears to be speculative.

Nor is it necessary to order a new validation of these studies, as Mr. Turner suggests. Although the UAREP audit was undertaken to determine whether the aspartame studies were authentic or fraudulent, the three volume report covering over 1,000 pages contain detailed observations of how these studies were conducted.

> UAREP has addressed itself to the question of whether the experiments were *carried out according to protocol plans* and the accuracy and reliability with which the experiments were performed and reported to the FDA. (Vol. 110 at 2) (emphasis added). Indeed, UAREP addressed such issues as: (1) Protocols; (2) clinical observations; (3) body weight, food, and compound consumption; (4) survival data; (5) clinical laboratory studies; (6) ophthalmoscopic observations; (7) necropsy; and (8) histopathology (Vol. 110 at 5–15) as well as (9) personnel, facilities and methods; (10) animals and animal care; and (11) data production, handling and storage (Vol. 110 at 20–22). The FDA portion of the audit had a similar scope. These are very similar subject areas to those which Mr. Turner raises in his appeal (see Vol. 153, Tab 187 at 14–15). Yet, not once does Mr. Turner cite examples from the UAREP report as evidence of poor conduct of the studies. His request for a new "validation" review, therefore, appears to be merely a fishing expedition for evidence of "sloppy" laboratory practices.

It should be emphasized that UAREP, a consortium of nine universities, has unquestioned expertise in the area of preclinical animal testing and that its review of Searle's studies was undertaken with complete neutrality. Although UAREP, like the agency, noted some procedures and irregularities that warrant improvement, none were of such a serious nature as to invalidate an entire study. Indeed, UAREP noted, and I agree, that review of the histopathologic slides provides a better basis for validation of the data than many of the other parameters (Vol. 110 at 23). On this point UAREP noted general agreement between its pathologists' reviews and the original diagnoses (*id.* at 24–25). UAREP also noted that both Searle and Hazelton Laboratories were accredited by the American Association for Accreditation of Laboratory Animal Care which, at the time, carried out the most through and critical nationwide evaluation of animal care facilities (*id.* at 20).

Therefore, based on the extensive information available in the record regarding the conduct of Searle's studies, and Mr. Turner's failure to raise with particularity any specific issues other than the one discussed above, Mr. Turner's appeal is denied.

VII. Conditions of Use

The third issue at the hearing was defined as follows:

> Based on answers to the above questions,
>
> (a) Should aspartame be allowed for use in foods, or, instead should approval of aspartame be withdrawn?
>
> (b) If aspartame is allowed for use in foods, i.e., if its approval is not withdrawn, what

[42] Mr. Turner has had ample opportunity to do so, either at the hearing, as part of his "appeal" submitted after the hearing, or as part of his exceptions filed after the Board's decision.

[43] E–77/78 was one of the three studies which FDA, rather than UAREP, audited (see Section I above).

conditions of use and labeling and label statements should be required, if any? (44 FR at 31717).

The conclusions reached in Sections IV and V above compel the conclusion that aspartame should be approved for use in certain foods, as listed in 21 CFR 172.804. Equally clear is the fact that the post-marketing restrictions advocated by Dr. Olney (restrict aspartame to use only by obese and diabetic patients) and Mr. Turner (require a warning statement on all labels stating that aspartame should not be used by children) are not supported by the scientific evidence.

The conditions for use stated in the aspartame regulations (21 CFR 172.804), including labeling requirements, are affirmed in their entirety. These labeling requirements include: (1) A prominently displayed alert to persons with PKU that the product contains phenylalanine ("Phenylketonurics: Contains Phenylalanine"); (2) directions not to use aspartame in cooking or baking because the compound loses its sweetness when exposed to prolonged heat; and (3) labeling in compliance with FDA's special dietary foods regulations (21 CFR Part 105) if the food containing aspartame purports, or is represented, to be for special dietary uses.

The safety evaluation in Section IV above calls for one additional post-marketing requirement. One assumption in this proceeding is that extremely high amounts of aspartame's component amino acids may cause brain damage. Aspartame is being approved only because the available data establish that the maximum projected consumption of aspartame is still far, far below any level even suspected of being toxic. Neverthless, prudence dictates that these estimated use levels be compared to actual use levels to ensure the validity of the safety assessment. As a condition for approval, therefore, Searle is to monitor the actual use levels of aspartame and to provide such information on aspartame's use to the Bureau of Foods as the Bureau may deem necessary by an order, in the form of a letter, to Searle.

VIII. Conclusions

Based on the foregoing, I conclude that:

1. Section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)) permits FDA to approve a food additive petition only if a fair evaluation of the data establishes that the food additive will be safe under its proposed uses. See Section II.

2. "Safe" means a reasonable certainty in the minds of competent scientists that the food additive will not be harmful under its proposed uses. See Section II.

3. The act places the burden on proving safety on the company seeking approval of the food additive petition. See Section II.

4. For Searle to obtain approval of its food additive petition, it must prove that the data in the record establish that there is a reasonable certainty that the proposed uses of aspartame will not be harmful. See Section II.

5. The data in the record establish that the maximum projected daily consumption of aspartame is 34 mg/kg/day. See Section IV(A).

6. Based on the maximum projected daily consumption, the data in the record establish that there is a reasonable certainty that the ingestion of aspartame, either alone or together with glutamate, does not pose a risk of contributing to mental retardation, brain damage, or undesirable effects on the neuroendocrine regulatory systems. See Sections IV (B) and (C).

7. The data in the record establish that there is a reasonable certainty that the ingestion of aspartame does not induce brain neoplasms (tumors) in the rat. See Section V.

8. Searle has met its burden of proving that aspartame is safe for its proposed uses. Aspartame should therefore be allowed for use in foods as set forth in 21 CFR 172.804. See Sections III, IV, and V.

9. All the conditions of use contained in the aspartame regulation (21 CFR 172.804), including labeling requirements, should be required. In addition, post-marketing surveillance by Searle of aspartame's actual use levels is necessary to ensure that actual use remains well below suspected toxic levels. See Section VII.

The foregoing Final Decision in its entirety constitutes my findings of fact and conclusions of law.

IX. Order

In accordance with subsections (c)(3)(A), (f)(1), and (f)(2) of section 409 of the act (21 U.S.C. 348(c)(3)(A), (f)(1), and (f)(2)) and 21 CFR 12.130, and under the authority delegated to the Commissioner (21 CFR 5.10 (formerly 21 CFR 5.1)), it is hereby ordered that:

1. Approval of the food additive petition for aspartame (FAP 3A2885) is granted.

2. The stay of the effectiveness of the regulation for aspartame (21 CFR 172.804) is vacated and the regulation reinstated.

3. As a further condition for approval not listed in 21 CFR 172.804, Searle is to monitor the actual use levels of aspartame and to provide such information on aspartame's use to the Bureau of Foods as the Bureau may by order deem necessary.

The Initial Decision of the Public Board of Inquiry is affirmed in part and reversed in part, as modified and supplemented herein.

In accordance with section 409(f)(3) of the act (21 U.S.C. 348(f)(3)), the effective date of this order is October 22, 1981.

Dated: July 18, 1981.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Appendix A—Board's Decision on Potential Brain Damage From Phenylalanine

A. Diffuse Brain Damage Associated With Abnormally High Plasma-Phenylalanine Levels: Phenylketonuria

Phenylketonuria (PKU) is an inherited disorder in the metabolism of phenylalanine. It is transmitted by an autosomal recessive gene, and its incidence in the United States is about 1 in 15,000. The disorder results from the absence of an enzyme (phenylalanine hydroxylase) that converts phenylalanine (PHE) to tyrosine; as a consequence PHE accumulates in body tissues—including blood—in abnormally high concentration: in untreated phenylketonurics plasma-PHE levels usually range between 120–600 μmol/dl (20–100 mg %) instead of the normal 6–12 μmol/dl. Through mechanisms not yet fully understood, these grossly elevated PHE concentrations are correlated with severely impaired development of the immature brain in general, and of the myelin sheaths of its nerve fibers in particular. The clinical consequence of this developmental impairment is a profound mental retardation, often accompanied by epileptic seizures and chronic dermatitis. Children born with the enzyme deficiency can develop to adults of normal intelligence, provided their condition is recognized soon after birth, and appropriate dietary treatment instituted promptly thereafter. It is estimated that the PKU newborn loses one percentage point of future intellectual capacity for each postnatal week the condition goes unrecognized (cf. Dr. Richard Koch's testimony at the public hearing). Treatment is aimed at keeping plasma-PHE concentrations at or below 70–80 μmol/dl by restricting the dietary intake of PHE. If this preventative regimen is to successfully maintained, families with a phenylketonuric child must impose upon the child a strict dietary discipline that cannot be relaxed until the child is adolescent. It is important to note, however, that phenylketonuric mental

retardation is conditional upon *sustained* high plasma levels of PHE, in contrast to the more focal brain damage that can result—as will be emphasized in a subsequent section—from a single, short-lived surge of glutamic or aspartic acid concentration in the blood plasma.

The essential question with which the Board found itself confronted in examining the phenylalanine issue is: at what level of ingestion could aspartame induce a rise in plasma-PHE concentration to 100 μmol/dl or higher—the levels associated with impaired brain development? It is clear that this question is of particular importance in the case of children under 12, whose brain is still immature, and in the case of women in the child-bearing age. The importance of the question for the latter category is accentuated by the well-established fact that the placenta maintains between the maternal and fetal circulations a 1:2 gradient in the plasma concentrations of most amino acids, including phenylalanine. This means that or the fetal plasma-PHE concentration to reach the 100 μmol/dl level, the maternal plasma-PHE concentrations needs to rise no higher than 50 μmol/dl.

Of the evidence presented the Board considers the following data of particular significance:

1. In *normal human adults*, the ingestion of a single loading dose of 34 mg/kg body weight aspartame (the 99th percentile of projected aspartame consumption *for an entire day*) dissolved in orange juice induces a rise in plasma-PHE concentration from a fasting level of 6 μmol/dl to 11 μmol/dl, a level normally found in adults and children following ingestion of a protein-rich meal. This peak value is reached about one hour after the aspartame ingestion, and recedes to fasting level within about 8 hours.

Ingestion of larger loading doses induces proportionately higher plasma-PHE elevations. A 50 mg/kg loading dose (in a 60 kg person 3,000 mg aspartame, or 150 aspartame tablets, or 6 liters of aspartame-sweetened beverage, but with its 50% content of PHE equivalent to less than half the 4,000 mg PHE contained in one 4-oz. hamburger) causes the plasma-PHE level to rise from 6 to 16 μmol/dl. Following a 100 mg/kg loading dose (equivalent to 12 liters of aspartame-sweetened beverage consumed in a single sitting) the plasma-PHE level rises to 20 μmol/dl. Only a 200 mg/kg loading dose was found to induce a rise to 50 μmol/dl, and only following this very large dose did the plasma-PHE concentration take more than 8 hours to return to baseline. This 200 mg/kg dose corresponds to 600 aspartame tablets, or 24 liters of aspartame-sweetened beverage consumed in a single sitting by a 60-kg adult, or to 100 tablets of 20 mg aspartame accidentally ingested by a 3-year old child. Only in this grossly abusive amount could aspartame ingested by a pregnant woman be expected to induce plasma-PHE concentrations high enough to cause, through placental transfer, fetal plasma-PHE levels approaching—for a few hours at least—the lower limit of potential toxicity. However, it seems inconceivable that so large a dose would be taken in a single sitting. When consumed over a 16-hour period—as would seem nearly unavoidable—it would undoubtedly induce a more sustained plasma-PHE elevation remaining well below the 50 μmol/dl peak induced by the same amount of aspartame taken as a loading dose.

2. In the normal *one-year old infant*, a loading dose of 34 mg/kg body weight causes the plasma-PHE concentration to rise from a fasting level of 6 μmol/dl to 10 μmol/dl, receding to baseline within 4 hours. It appears from this finding that the 1-year old normal child metabolizes PHE at least as effectively as does the normal adult.

3. In *individuals heterozygous for phenylketonuria*, a 34 mg/kg loading dose of aspartame induces a higher and longer-lasting plasma-PHE elevation. Instead of the 11 μmol/dl peak resulting from such a loading dose in the normal human, the peak reaches 16 μmol/dl in the PKU heterozygote and, in addition, the plasma-PHE curve declines more slowly than it does in normal individuals. A loading dose of 100 mg/kg aspartame—an abuse load even when ingested over a 16-hour period—is followed by a plasma-PHE rise reaching 42 μmol/dl, about twice as high as in the normal human. Even following this enormous single load, however, the peak value remains below the level at which, in the case of a pregnant woman, a risk to her unborn child might arise. Moreover, an abuse dose of 100 mg/kg aspartame would in the real-life situation not be ingested in a single sitting, as it was in the cited experiments, but, rather, consumed over an extended time period. Under these more natural conditions, the plasma-PHE concentration could be expected to remain well below the 42 μmol/dl level. It is of interest to note that a 100 mg/kg intake of aspartame by a 60-kg woman would add less to her dietary PHE consumption than would be added by an extra 4-oz. hamburger: 3,000 instead of 4,000 mg PHE.

4. *Undetected cases of phenylketonuria.* The question has been raised whether a risk might occur in unidentified PKU children as a consequence of the presence of aspartame in the food supply. The number of children in this category is unknown but thought to be very small. Screening of newborns for PKU is mandatory in 47 states, and it has been estimated that about 10% of the 200 PKU children born annually in the United States might remain undiagnosed and hence at great risk to grow up retarded (cf. Dr. Richard Koch's testimony at the public hearing). An undetected phenylketonuric infant would be adversely affected by the phenylalanine provided in breast milk protein (or infant formula) which may furnish levels of phenylalanine intake in the vicinity of 80 mg/kg/day. (This compares with a projected mean phenylalanine intake from aspartame in children under 2 years of 3 mg/kg/day). The argument that asartame in the food supply would significantly increase the risk of mental retardation in the unidentified phenylketonuric is not supported by these considerations. An undiagnosed PKU child is at risk first and foremost by being undiagnosed and hence permitted to consume meals that are standard for normal children. This point is emphasized further under the next item of consideration.

5. *PKU children who are not on a restricted diet.* As PKU children get older they may be allowed larger helpings of "free" food or they even go off their earlier retricted diet. This may not be harmful provided that the child's tolerance to phenylalanine is carefully monitored by blood tests. However, the question arises whether the availability of aspartame in the food supply would compromise the health and well-being of PKU children in this category. There appear to exist no explicit data based on controlled studies to answer this question, but it is possible to seek an answer by considering the amounts of phenylalanine that such children would be exposed to through usual food sources, in comparison with the PHE provided by aspartame. For example, a 4-oz. hamburger supplies about 4,000 mg phenylalanine, and a normal child would consume an average of about 200 mg phenylalanine per kg/day from normal food protein sources. This intake level compares with a projected daily aspartame-based phenylalanine intake of 17 mg/kg by those children whose aspartame consumption would reach the upper 99th percentile of the population. (For a 30-kg child this would correspond to a daily consumption of 2 helpings of

aspartame-coated breakfast cereal plus 8 cans of aspartame-sweetened beverage). Thus, for children on an unrestricted diet aspartame ingestion even at this high level would contribute less than 10% of the total daily PHE intake. For children whose protein intake is restricted the relationships between food protein-derived and aspartame-derived phenylalanine would differ, but again the total intake provided by aspartame remains small. In considering the daily variation in protein intake and the concentration of phenylalanine provided by normal foods it is evident that the ingestion of aspartame could not pose a significant extra risk to PKU children whose diet is either not restricted or only partially restricted. The significant risk to their health is clearly from the phenylalanine in the protein furnished by standard foods: In a 30 kg youngster one extra hamburger would add 100–150 mg/kg, one extra hot dog about 50 mg/kg, one extra glass of milk 15 mg/kg or nearly as much as the total amount of PHE supplied by a 34 mg/kg intake of aspartame.

6. *Hyperphenylalaninemia.* This term refers to a condition in which plasma-PHE levels anomalously range between 25 and 120 μmol/dl. Most of those afflicted with this abnormality are of normal intellect, and since they are usually asymptomatic also, neither they nor others are likely to be aware of their condition unless it has been identified by a newborn-screening test. The incidence of hyperphenlyalaninemia is about $\frac{1}{50000}$, and it has been estimated that in the United States the condition affects about 1,750 women of childbearing age. It is this latter category that gives the most reason for concern, since the 50% among these women who have plasma-PHE levels ranging between 60 an 120 μmol/dl are at high risk of giving birth to brain-damaged children destined to grow up mentally retarded. The only effective prevention of this consequence of hyperphenylalaninemia would consist in a systematic reduction of dietary PHE intake through pregnancy—in other words, in treating the prospective mother much as a phenylketonuric child would be treated. Such prophylactic measures, however, are naturally contingent upon identification of the anomalous condition before or shortly after the beginning of the pregnancy. It follows that until such time as all hyperphenylalaninemics are identified by screening tests a complete prevention of congenital brain damage caused by maternal hyperphenylalaninemia cannot realistically be hoped for.

In evaluating the risk inherent in aspartame consumption by hyperphenylalaninemics, it is obvious that aspartame as a source of PHE can only contribute further to the already high plasma-PHE levels. It should be considered, however, that even the unlikely abuse intake of 100 mg/kg of aspartame per day by a 60-kg woman would supply less PHE (3,000 mg) than would be supplied by an extra 4-oz. hamburger (4,000 mg), and that the more likely (although still very high) intake of 34 mg/kg/day would be the PHE-equivalent of little more than two extra glasses of milk. It thus seems fair to conclude that the hyperphenylalaninemic woman is at much higher risk from the consumption of natural foods that she would be from the use of aspartame. It should be reiterated that the real problem of hyperphenylalaninemia lies in the usually covert nature of the anomaly.

Conclusions Regarding Aspartame-Induced Mental Retardation

In the Board's opinion, *aspartame consumption by normal humans* cannot be expected to increase the incidence of that particular form of mental retardation that is associated with sustained elevation of plasma-PHE levels to (or beyond) 120 μmol/dl during immature stages of brain development. This conclusion is based on the consideration that even the highly unlikely daily consumption level of 100 mg/kg of aspartame (3 times the projected upper one-percentile of aspartame consumption) would add no more than 15–20% to the normal dietary PHE intake, less than would be added in a 60–kg individual by an extra 4–oz. hamburger. Consumed at the estimated upper one-percentile level of 34 mg/kg/day, aspartame would increase the normal daily intake of PHE by no more than six percent. These figures lie well within the limits of day-to-day variations in dietary protein consumption.

In *individuals on a PHE-restricted diet* designed to prevent critically elevated plasma-PHE levels, aspartame is to be handled as any other source of phenylalanine. Since these individuals (phenylketonuric children and pregnant women known to have hyperphenylalaninamia) would follow a carefully prescribed diet, a cautionary label explicitly identifying aspartame as a PHE source should forestall a liberal use of this sweetener by such patients.

In the unfortunate case of *unidentified hyperphenylalaninemia*, the normal food-derived PHE poses a much greater risk to the patient (or the unborn child) than would aspartame, even when consumed in very large amounts. The hyperphenylalaninemic gravida not on a PHE-restricted diet would add 5–6% to her dietary PHE intake when consuming aspartame at the projected upper one-percentile level.

Appendix B.—Board's Decision on Potential Brain Damage From Aspartic Acid

B. Focal Brain Lesions

Since first demonstrated in 1969 by Olney and coworkers in the mouse, it has become generally recognized that the acidic, dicarboxylic amino acids glutamic acid (GLU) and aspartic acid (ASP), when present in the blood plasma in adequately high concentration, can cause death of nerve cells in the central nervous system. As far as is known at present, this neuronal necrosis is focal rather than diffuse; it is certain that it preferentially affects (1) the infundibular region of the hypothalamus, (2) the so-called circumventricular organs (the area postrema, the subfornical organ, the subcommissural organ, the vascular organ of the lamina terminalis), and (30 the retina.

The evidence that acidic amino acids are potential neurotoxins naturally has raised questions with respect to the safety of aspartame as a food additive. Roughly one half of aspartame'e molecular weight is contributed by its aspartic-acid moiety, and it is appropriate to ask whether its consumption could entail a risk of focal brain damage. Before considering the evidence it is necessary to point out that there are at least two reasons why this question concerning aspartic acid cannot be examined separately and must be considered together with a similar question concerning glutamic acid, a food additive already in wide use in the United States and elsewhere: (1) Both of these amino acids appear to be equipotential and mutually additive in their neurotoxic effects, and (2) a significant proportion of ingested aspartic acid in the course of its metabolism is transaminated to glutamic acid. For these reasons, it is the combined GLU–ASP content of blood plasma that ultimately must be considered, rather than the plasma ASP level alone. It is also for these reasons that the Board permitted a voluminous body of data concerning glutamic acid to be presented, even though aspartame itself is free from this amino acid. Throughout the following survey of data it is assumed that glutamic acid or monosodium glutamate (MSG) is exchangeable with aspartic acid or sodium aspartate in the sense that the

neurotoxic threshold levels of these substances in the blood plasma appear to be approximately the same.

Focal Brain Lesions Induced in Experimental Animals by Monosodium Glutamate

There is general agreement among investigators that high doses of MSG administered either by subcutaneous, intraperitoneal or intravenous injection, or by gavage (stomach intubation), can induce hypothalamic lesions in a variety of rodent species. Of all experimental animals used in such experiments the infant mouse, 1–10 days old, has been found most vulnerable to the neurotoxic action of MSG: a single dose of 350 mg/kg injected subcutaneously, or of 500 mg/kg administered by gavage, is enough to cause, within a few hours time, a microscopically visible lesion of the hypothalamus in about half of the infant mice so treated. Correlated with this 50%-effectiveness level of intake is a rise in plasma-GLU concentration from a baseline value of about 15 μmol/dl to 100 μmol/dl. With increasing maturity mice become more resistant to MSG: in weanling mice a 50% effect requires an MSG dose of 1200 mg/kg administered by gavage and resulting in a plasma-GLU concentration of about 380 μmol/dl. In adult mice the critical plasma-GLU concentration lies near 600 μmol/dl.

Other non-primate mammalian species seem generally less vulnerable to the neurotoxic action of MSG. Although the infant rat is nearly as sensitive to MSG as the infant mouse, the 50%-effect dose in the adult rat lies near 4000 mg/kg by gavage. The critical dose in the 2–3 day old guinea pig is about 2000 mg/kg. In dogs 3–35 days old an intake of 1100 mg/kg by gavage fails to induce hypothalamic lesions, as do doses of up to 4000 mg/kg in adult dogs.

Data for the monkey are controversial. The Board is unable to resolve the conflicts that arose over this issue at the public hearing. However, to remain on the side of safety it accepts the claims: (a) That a dose of 1000 mg/kg of MSG administered by gavage or subcutaneous injection can cause microscopically detectable hypothalamic lesions in infant monkeys ranging between prematurely born and 7 days of age, and, (b) that intravenous injection of 2000 mg/kg of MSG in the pregnant monkey can induce such lesions in her fetus. Despite existing controversies the Board also accepts the suggestion that the plasma-GLU level critical for the occurrence of hypothalamic lesions in the immature monkey lies in the vicinity of 120 μmol/dl.

MSG neurotoxicity in *pregnant or lactating animals* appears to have been studied only in a small number of species. Two separate groups of investigators have reported that in the pregnant mouse MSG must be injected in very large amounts (5000 mg/kg) to include hypothalamic lesions in her fetuses. This finding accords well with the evidence (considered in more detail below) that the placenta in the monkey maintains a highly effective barrier against both GLU and ASP; only at grossly elevated maternal plasma-GLU levels (280 μmol/dl) does GLU in this mammalian species begin to enter the fetal circulation. A somewhat similar barrier appears to be maintained by the mammary gland: In the lactating human female at least, the ingestion of relatively high doses of MSG does not significantly affect the GLU content of her milk (see below).

Dietary intake of MSG by experimental animals. In all of the animal experiments mentioned in the foregoing account, MSG was either injected, or administered by stomach tube in the form of an aqueous solution. Markedly different effects upon plasma-GLU concentrations have been reported from experiments in which mice were given MSG mixed with food. Mixed with "infant formula" or with a "soup diet," and administered by stomach tube, MSG in weanling mice has been reported to induce a rise of the plasma-GLU concentration only one-fifth to one-third as large as that caused by the same amount of MSG mixed with water. Ingested by adult mice as a food additive in the enormous amount of 20,000 mg/kg, MGS has been reported to induce peak plasma-GLU concentrations no higher than 174 μmol/dl, little more than one-quarter of the plasma level (630 μmol/dl) that is correlated with hypothalamic lesions caused by subcutaneous injection of 1500 mg/kg MSG. It is relevant in this context that the archival literature includes no report of brain lesions induced in any species by dietary intake of any amount of MSG.

A postscript to these negative findings must be made. In a post-hearing communication dated April 3, 1980, to the Board and to his co-participants in the hearing, Dr. Olney reported having found clear-cut hypothalamic lesions in all of 10 weanling mice who—after having been deprived of water overnight—had drunk 0.2–0.35 ml of either a 10% aqueous GLU (presumably l-glutamic acid) solution or a solution containing 6.5% GLU, 3.5% ASP, and 1% aspartame, while concurrently consuming an unspecified amount of Purina mouse chow. The Board accepts this evidence (acknowledging that it stands at present unconfirmed) and considers that it imposes a qualification upon those statements according to which no focal brain lesions have been induced in any species by voluntary consumption of any amount of GLU or its monosodium salt. A rough calculation suggests that the weanling rats had ingested a minimum of 13 mg of GLU with the drinking water. Assuming that body weights ranged between 10 and 15 g, this intake corresponds to a loading dose of 900 mg/kg to 1300 mg/kg body weight.

Focal Brain Lesions Induced in Experimental Animals by Aspartame

In the infant mouse, 2000 mg/kg aspartame administered by gavage in the form of an aqueous slurry has been reported to cause hypothalamic lesions in 39% of subjects. No such lesions were found in any 9-day old mouse given 500 mg/kg aspartame by gavage. It seems reasonable to assume that in the infant mouse the risk of hypothalamic lesions begins to arise at a dose level of 1000 mg/kg aspartame administered by gavage. This dose approximately corresponds to 500 mg/kg aspartic acid.

Since neither the same dose nor very much higher doses of aspartame consumed by immature mice as part of the daily diet have been found to induce endocrine disorders (see below) it seems warranted to conclude that the resorption and/or metabolism of aspartic acid depends upon the route by which this amino acid is administered. Much like MSG, aspartic acid ingested as a food additive has been reported to induce elevations of the plasma-ASP level smaller than those induced by aspartic acid administered by gavage or subcutaneous injection. Further data concerning this point will be considered in a subsequent review of aspartame consumption in the human.

Neuroendocrine Disorders Induced by MSG and Aspartame in Experimental Animals

In view of the topographic characteristics of its neurotoxic effects it is not surprising that MSG administered in large amounts by subcutaneous injection has been found to induce endocrine disorders in mice, rats, and hamsters. In all of the studies from which such disorders were reported, subjects had received either a single subcutaneous injection of 3000 mg/kg MSG on the second postnatal day, or a daily injection of 2200–4000 mg/kg for 10 days starting on day 2. Prominently listed among the consequences of such treatments are: stunting of body growth, obesity, and sterility in the female.

Although apparently not explicitly demonstrated thus far, it seems reasonable to assume that in the same species subcutaneous injection of similar amounts of aspartate, or administration of aspartame by gavage in twice these amounts, would have similar endocrine consequences. It must be stressed, however, that no studies concerning the endocrine effects of subcutaneous or intragastric administration of either MSG or aspartate appear to have been done in species other than rodents. Hence, at present nothing can be said concerning the relative susceptibility of the endocrine system of various non-rodent species to parenterally administered MSG or aspartate.

Neuroendocrine Effects of Sub-neurotoxic Doses of MSG and Aspartame

One of the objecting parties has stressed the possibility that a routine intake of MSG or aspartame several times a day by children throughout their formative years could entail repetitive disturbances in several neuroendocrine axes (e.g., gonadotropins, growth hormone, and prolactin) and that such perturbations could adversely affect somatosexual development. According to this suggestion, neuroendocrine disorders induced by MSG or aspartame need not be associated with anatomically demonstrable lesions of the hypothalamus, and can be caused by an imbalance of hypothalamic function resulting from the neuroexcitatory effect of glutamate and aspartate. The notion is based upon a report by the objecting party according to which a subcutaneous injection of MSG in the presumably sub-neurotoxic amount of 1000 mg/kg in the adult rat markedly elevates plasma levels of luteinizing hormone (LH) and testosterone (TS). It was pointed out at the hearing, however, that quantitatively similar fluctuations of LH and TS levels occur normally in the course of each 24-hour period, and that the reported increases may thus have reflected no more than a normal circadian or ultradian periodicity of LH and TS release. Moreover, in two other published studies no correlation between MSG injections and fluctuations of LH and TS levels could be demonstrated.

The suggestion that a routine intake of aspartame during immature stages of development can entail an impairment of sexual function in later life would seem effectively refuted by the results of a long-term study of the effects of aspartame consumption on reproductive function in the rat. In this study, a daily dietary intake of very large amounts of aspartame ranging between 1800 and 3700 mg/kg, beginning on postnatal days 10–20 and ending on days 90–100, did not affect fertility, gestation, live birth, litter size, or nursing in either the experimental subjects or their offspring. The results of several further studies presented at the hearing likewise indicate that endocrine disorders are induced by MSG only when this substance is administered in amounts large enough to cause identifiable hypothalamic lesions. The experimental evidence thus appears to argue against the notion of sub-neurotoxic effects upon the neuroendocrine axis.

Glutamate and Aspartame Consumption in the Human

Among the data presented on this subject, the Board considers the following pragmatic evidence of particular relevance.

1. *In the adult*, a loading dose of 34 mg/kg aspartame (the 99th percentile of a projected mean daily consumption of 7–9 mg/kg, and roughly equivalent to 100 tablets of 20 mg aspartame) dissolved in orange juice induces no significant elevation of either plasma GLU or plasma ASP concentration. Neither does a loading dose of 50 mg/kg aspartame induce any significant rise of GLU or ASP concentration in either blood plasma or erythrocytes.

2. A similarly administered aspartame loading dose of 200 mg/kg in the adult (equivalent to 600–800 aspartame tablets) causes the plasma ASP level to rise from a baseline of 0.2 μmol/dl to 1 μmol/dl, receding to baseline in 3 hours. Following such a dose, the plasma GLU level rises from 2.5 μmol/dl to 6 μmol/dl for a combined plasma GLU + ASP rise to 7 μmol/dl.

3. A hamburger-milkshake meal providing 1 g of protein per kg body weight, and containing free plus protein-bound GLU in the amount of 171–198 mg/kg body weight and free plus protein-bound ASP in the amount of 90–103 mg/kg body weight, causes an elevation of the plasma GLU level from a baseline of 4 μmol/dl to 9 μmol/dl, and raises the plasma ASP level from a baseline of 0.3 μmol/dl to 0.8 μmol/dl. The addition of 34 mg/kg MSG (the 90th percentile of projected MSG consumption) to this meal has no effect upon these post-prandial elevations, and neither does the addition to the meal of 34 mg/kg MSG plus 34 mg/kg aspartame. If the MSG addition to the meal is increased to 150 mg/kg the plasma GLU + ASP level rises from a baseline of 5 μmol/dl to 25 μmol/dl; the addition of 34 mg/kg aspartame in this case causes no further increase in the plasma GLU + ASP level.

4. *In one-year old infants*, a loading dose of 100 mg/kg aspartame induces a rise of the plasma ASP level from a baseline of 1.5 μmol/dl to 2.6 μmol/dl, receding to baseline in 1–2 hours. This finding appears to refute any suggestion that aspartic acid might be metabolized less efficiently in infants than in adults.

5. *In PKU heterozygote* adults aspartame loading doses of 34 mg/kg and 100 mg/kg are metabolized much as they are in normal individuals. The resulting rise in plasma GLU level is virtually the same in both categories of subjects, while the rise in plasma ASP level is slightly, but not significantly, higher: Plasma GLU + ASP level reaches a mean of 4.5 μmol/dl in normal adults, a mean of 4.8 μmol/dl in PKU heterozygote adults.

6. *In the lactating woman*, a loading dose of 50 mg/kg aspartame (about 150 aspartame tablets) induces no significant elevation of plasma ASP or GLU levels. This dosage raises the ASP concentration in her milk from 2.3 to 4.8 μmol/dl, the GLU concentration from 109 to 120 μmol/dl. At this high level of maternal aspartame intake, the breast-fed infant's normal daily intake of 366 mg/kg GLU + ASP is increased by no more than 0.77 mg/kg.

7. *Placental transfer of ASP to the fetus*. For obvious reasons, this problem cannot be directly approached experimentally in the human. The following conclusions are based upon experiments in pregnant monkeys.

The primate placenta maintains a 1 : 2 plasma-concentration gradient toward the fetal circulation for most amino acids. However, both GLU and ASP are exceptions to this rule. GLU is not transferred at all from the maternal to the fetal circulation even when the maternal plasma level is increased from a baseline of 5 μmol/dl to 55 μmol/dl; only at the enormously elevated maternal plasma GLU level of 280 μmol/dl—induced by direct intravenous infusion of GLU—does some transfer to the fetus take place. The placenta maintains an equally effective barrier against ASP: intravenous infusion of 100 mg/kg ASP (in one hour) elevates the maternal ASP level from a baseline of 0.4 μmol/dl to 80 μmol/dl; the fetal plasma ASP level under these conditions does not exceed 0.42 μmol/dl. Maternal ASP infusion of 200 mg/kg/hr induces a maternal plasma ASP rise to 237 μmol/dl, while the fetal plasma ASP level rises from a baseline of 0.6 μmol/dl no further than 4.5 μmol/dl.

Taken together with items 1 and 2 above, these findings indicate that both mother and fetus are thoroughly protected against hazardous plasma

ASP levels: The mother by a highly effective barrier of ASP resorption and/or metabolism, the fetus in addition by an equally effective placental barrier. The mother herself has no comparably effective defense against GLU, but plasma GLU levels high enough to place her at risk are not reflected in the fetal blood plasma.

Risk Evaluation

In attempting to assess the risk of focal (in particular, hypothalamic) brain damage connected with human aspartame consumption, the Board decided to adopt a 100 μmol/dl concentration of GLU+ASP in the blood plasma as the critical level. This conservative assumption was made for reasons of caution: 100 μmol/dl is the concentration at which a 50% occurrence of focal brain lesions has been reported for the infant mouse, the animal form generally thought to be most sensitive to the neurotoxic effects of glutamic and aspartic acid. the problem thus became reduced to the question whether, and at what level of consumption by the human aspartame could induce plasma GLU+ASP elevations approaching the 100 μmol/dl level when taken alone, or alternatively, whether it could significantly contribute to such elevations induced by MSG consumption. It should be recalled in this connection that—unlike the brain damage associated with phenylkalanine—the focal brain lesions associated with GLU and ASP neurotoxicity are not contingent upon a long-maintained high plasma concentration of the causative agent: It is evident from animal experiments that focal hypothalamic lesions can be induced by a single elevation of the plasma GLU and/or ASP concentration to the level of 100 μmol/dl.

It is of some historic interest that much of the evidence reported to the Board concerning the aforementioned question dates from recent years (1976–1979), and consequently was not available at the time the objections to the approval of aspartame as a food additive were originally filed. With a single exception, the following statements can at present be considered justified by the results of experiments done directly in the human rather than in one or more animal species:

1. The human organism, infant as well as adult, is protected against high surges of ASP concentration in either blood plasma or erythrocytes by a biological barrier mechanism presumably located in the gastrointestinal mucosa and/or liver. The effectiveness of this protective mechanism is illustrated by the observation that loading doses of aspartame as high as 200 mg/kg body weight (in a 60 kg individual equivalent to 600 aspartame tablets or 20 liters of aspartame-sweetened beverage consumed in a single sitting) induce an elevation of plasma and erythrocyte GLU+ASP concentration of no more than 5 μmol/dl above a baseline level of 2.5–3 μmol/dl. It is of added significance that these elevations are short-lived, receding to baseline in about 3 hours time. It follows that repeat-doses of the same enormous magnitude, when spaced 3 hours apart, are unlikely to escalate the GLU+ASP concentration much beyond the level induced by the first dose.

2. The ASP plasma-entry barrier is unaffected by simultaneously ingested MSG: the 25 μmol/dl plasma GLU+ASP concentration achieved by adding to a protein-rich meal a very large dose of MSG (150 mg/kg, or 9000 mg in the case of a 60 kg person) is not augmented by the further addition of 34 mg/kg aspartame (100 aspartame tablets) to the meal.

3. The PKU heterozygote adult is no less effectively protected against aspartame-induced surges of plasma GLU+ASP concentration than the normal human.

4. In the breast-fed infant, a consumption of 50 mg/kg aspartame by the lactating mother results in an increase of no more than 0.77 mg/kg GLU+ASP over the normal daily intake of 366 mg/kg GLU+ASP.

5. The speculation that aspartame consumption by the pregnant women could expose her fetus to a high risk of focal brain damage cannot be investigated directly in the human. However, experimental findings in the monkey indicate that the primate placenta maintains a nearly insurmountable barrier against any transfer of GLU and ASP from the maternal to the fetal circulation.

Conclusion Regarding Aspartame-Induced Focal Brain Lesions

In the Board's opinion, the most pertinent evidence presented at the public hearing convincingly demonstrates that *the risk of focal brain damage associated with aspartame consumption in the human is negligible.* Elevation of plasma GLU+ASP concentration even to the lowest level that could be suspected of being neurotoxic (100 μmol/dl) would require an inconceivably high oral aspartame intake. Such levels might in fact prove attainable only by parenteral ASP administration designed to bypass the highly effective intestinal and/or hepatic barrier mechanism guarding against surges of plasma ASP concentration.

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Friday
July 24, 1981

Part V

Department of Agriculture

Food and Nutrition Service

Food Distribution Program; Food Bank Demonstration Project

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Food Bank Demonstration Project

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of Demonstration Project.

SUMMARY: This Notice announces the Department of Agriculture's intention to conduct a demonstration project involving the provision of USDA-donated foods to food banks for use in emergency food box distribution programs to needy individuals and families. This demonstration project is mandated under Section 211 of the Agricultural Act of 1980 (Pub. L. 96–494). This Notice also sets forth the procedures under which the demonstration project will be conducted and solicits applications to take part in the project from food banks which have been providing an emergency food box distribution service since March 1980.

DATES: Effective date: July 24, 1981. Application: Food banks desiring participation in the project must apply on or before August 24, 1981.

FOR FURTHER INFORMATION CONTACT: Gwena Kay Tibbits, Chief, Program Monitoring and Policy Development Branch, Food Distribution Division, Food and Nutrition Service, USDA, Washington, D.C. 20250 (202–447–8386).

SUPPLEMENTARY INFORMATION: Section 211 of the Agricultural Act of 1980 mandates that the Department demonstrate, through the actual participation of selected sites, the feasibility of providing USDA-donated foods to food banks for use in emergency food box distribution to eligible individuals and families. In addition to testing the feasibility of USDA providing food items for use by food banks, the Department will evaluate the effectiveness of and need for Federal participation in such a program, and the feasibility of continuing such participation. The evaluation will take into account various aspects of the households served by this program, including the socio-economic and demographic characteristics of such households, the circumstances placing the households in need of emergency assistance, and other social assistance services in which the households are participating or for which they are eligible. Participation data, food donations and inventory data, transportation and delivery costs, administrative procedures and cost data related to the receipt and distribution of USDA-donated foods, and staffing patterns will be examined by the Department in preparing its evaluation. The results of that evaluation will be forwarded to Congress by October 1, 1982, as required by statute.

Description of Project

The Food Bank Demonstration Project mandated by the Agricultural Act of 1980 (Pub. L. 96–494) is scheduled to begin on or about October 1, 1981, and will operate for no more than one year. Three sites will be selected to participate in the demonstration project. Each project site will be located in a different FNS Region, of which there are seven. The selections will be made in consultation with the Community Services Administration and other appropriate agencies.

Basic Operational Requirements

USDA-donated foods will be made available to food banks in accordance with an FNS-approved agreement between the State Distributing Agency under FNS's Food Distribution Program and the food bank. We expect that the following food items will be provided in package sizes available to the Department: (a) Instantized non-fat dry milk; (b) butter; and (c) process American cheese. These food items will be provided in quantities which the food bank can use without waste. Some of these food items may require repackaging. These food items shall be used to supplement foodstuffs obtained from other sources. Food banks shall prepare and provide food boxes containing USDA-donated food items to those households which have been certified by the food bank to be in need of emergency food assistance.

State Distributing Agency Responsibilities

The affected State Distributing Agency must enter into an agreement with FNS under which it will provide donated foods to food banks in accordance with an FNS-approved agreement with the food bank.

It will also be responsible for ensuring that food banks do not exceed a 60-day supply of donated food items in inventory. Finally, the agency will be asked to review and transmit to the appropriate FNS Regional Office quarterly reports prepared by the food bank on the number of food boxes distributed, the number of individuals in the recipient household and other information as required by FNS, and to report monthly on the types and quantities of food items provided to the food bank.

Food Bank Responsibilities

Each food bank participating in the project must enter into an agreement with FNS under which it will be required to maintain leased, owned or donated facilities which are adequate for the storage of a 60-day supply of dry, refrigerated and frozen donated food items and will properly safeguard against theft, spoilage, and other loss. In areas where health department certification is required, the project site must maintain such certification for the storage, repackaging and distribution of foodstuffs for the duration of the demonstration project. Households will be certified by the food bank for participation in the program according to USDA-approved procedures. The food bank will be responsible for maintaining records which identify all households certified to receive the emergency food box. Each household record shall contain, at a minimum, the case name, address, household size, circumstances placing the household in need of food assistance, declaration of other social assistance programs for which the household has applied, the type and quantity of USDA food items which have been provided to the household and the date the food box was provided. The food bank will also be responsible for repackaging USDA-donated food items in accordance with FNS-approved guides and applicable health department requirements; preparing and distributing, in accordance with the

FNS-approved guide rate, food boxes which provide a maximum 3-day supply of USDA-donated foods; ensuring that no more than three food boxes are provided to any household during a 6-month period; and establishing procedures to avoid the duplicate issuance of food boxes. Finally, the food bank will be asked to cooperate with all evaluation activities connected with the demonstration project, including the preparation and submission of quarterly reports to the State Distributing Agency on the number of food boxes distributed, the number of individuals within the recipient households, and other information needed for the evaluation of the project.

Federal Responsibilities

FNS will monitor project operations, evaluate the demonstration project, and provide whatever training and technical assistance may be necessary during the project. FNS will also pay approved administrative costs associated with any data compilations which are requested by FNS over and above those recordkeeping requirements set forth in Part 250 of the Food Distribution Program Regulations or this Notice. USDA will pay the costs for providing USDA-donated foods to the State Distributing Agency.

Eligible Institutions

Food banks wishing to participate in the demonstration project must have tax exempt status under the Internal Revenue Service Code. The food bank must have been in operation since March 1980 and provided an average of 100 food boxes per month during the three months previous to submission of its application for participation. In areas requiring current Health Department certification for the storage and handling of food stuffs, the food bank must have obtained that certification.

Applications

Food banks which meet the criteria for eligibility set forth above may obtain applications for participation in the demonstration project from the Director, Food Distribution Division, Special Nutrition Programs, Food and Nutrition Service, USDA, GHI Building, Washington, D.C. 20250. Applicants must provide the information requested in Attachment I, Application for Participation in the Food Bank Demonstration Project. This information may be submitted in whatever format the applicant deems appropriate. Applications must be signed by the food bank representative(s) with the authority to commit the organization to the project; postmarked no later than 30 days after publication of this Notice; and returned to the Director, Food Distribution Division, at the above address.

Selection of Sites

All food banks applying for participation in this demonstration project will be reviewed by a panel consisting of FNS and Community Services Administration representatives. Applications will be ranked based on the capability of the applicants to comply with the provisions contained in the Regulations and this Notice; the availability of necessary facilities, staff, and other resources; and the State Distributing Agency's willingness to participate in the demonstration project. Since no more than one site per FNS Region will be selected, geographic location will also be taken into consideration.

Notice of Selection

USDA will notify all applicants of those sites selected for demonstration project operations.

Dated: July 21, 1981.

G. William Hoagland,

Administrator, Food and Nutrition Service.

BILLING CODE 3410-30-M

ATTACHMENT I

APPLICATION FOR PARTICIPATION IN THE FOOD BANK DEMONSTRATION PROJECT
NOTE: INFORMATION SHOULD BE PROVIDED FOR FOOD BOX DISTRIBUTION OPERATIONS ONLY

FOOD BANK ORGANIZATION

Name of Food Bank _____

Address _____

_____

Telephone Number _____

City/Community(ies) Served _____

Number of Distribution Sites _____

Name and title of the individual who would be responsible for this project and would act as a liaison between the USDA and the Food Bank _____

_____

Date of receipt of IRS tax-exempt status

_____

Month/year in which food boxes were first distributed

_____

Indicate the total number of paid and volunteer worker-hours per month which are currently used to perform the following food box tasks.

TASK	TOTAL NUMBER PAID WORKER-HOURS PER MONTH	TOTAL NUMBER VOLUNTEER WORKER-HOURS PER MONTH
Soliciting Donations		
Transporting Foods		
Repackaging Foods		
Assembling Food Boxes		
Determining Eligibility		
General Administration		
Other Support Functions		

FOOD BOX OPERATIONS

Number of food boxes distributed in each of the previous three months

(3rd preceding month) _____

(2nd preceding month) _____

(1st preceding month) _____

Approximate dollar value of the food and cash donations received during the previous three month period by sponsor type.

SOURCE OF DONATIONS	CASH	DONATED FOODS
Local Government		
Community Services Administration		
General Public		
Other		

Indicate the current cubic capacity of leased, owned, or donated facilities for dry, refrigerated and frozen food storage, and those which will be available to the Food Bank during the demonstration project.

TYPE OF STORAGE	TOTAL CURRENT CUBIC CAPACITY	TOTAL CUBIC CAPACITY AVAILABLE FOR USE DURING THE DEMONSTRATION PROJECT
DRY		
REFRIGERATED		
FROZEN		

Describe briefly the procedures which the Food Bank would implement to:

(a) Maintain records of households certified to participate as food box recipients:

(b) Account for USDA donated foods which have been distributed and those which are in inventory:

(c) Insure that only households which have been certified receive food boxes at the distribution site:

(d) Insure that households do not receive duplicate food boxes:

(e) Repackage foods into sizes appropriate for distribution to households:

The demonstration project will require the repackaging of some of the foods provided. Is State or local health department certification required to store or repackage foods?

YES ☐

NO ☐

If yes, is the applicant Food Bank certified to store and repackage food?

YES ☐

NO ☐

If yes, attach photo copies of the certification.

OTHER

In addition to the above information, describe the special characteristics, operations, or other items of consideration which would enhance USDA's understanding of your Food Bank operations.

In order to expedite the implementation of the demonstration project, please indicate the quantity of instantized non-fat dry milk, butter, and cheese which would be distributed to a one-person household as part of a three day supply of food. This information will not be used in the selection of project sites.

	QUANTITY
Non-fat dry milk	
Butter	
Cheese	

Date of application _____

Signature of a representative of the Food Bank with the authority to commit the organization to the demonstration project: _____

[FR Doc. 81-21773 Filed 7-23-81; 8:45 am]
BILLING CODE 3410-30-C

federal register

Friday
July 24, 1981

Part VI

Environmental Protection Agency

Standards Applicable to Owners and Operators of Hazardous Waste Treatment Storage and Disposal Facilities; Consolidated Permit Regulations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 264, and 265

[SW-FRL 1891-3]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment Storage and Disposal Facilities; Consolidated Permit Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of effective dates of interim final rules.

SUMMARY: In accordance with a determination under Executive Order 12291, EPA is today announcing that its January 12, 1981 standards for permitting hazardous waste tanks, container storage facilities, piles and storage surface impoundments and its January 23, 1981 standards for permitting hazardous waste incinerators will go into effect on July 13 and 22, 1981, respectively, as originally scheduled. However, it is EPA's intent to initiate rulemaking to suspend the effective dates of the permitting standards for storage surface impoundments and incinerators, as applied to existing facilities, in the near future.

DATES: The effective date for the interim final rules issued on January 12, 1981, in 40 CFR Parts 122, 264 and 265, but exclusive of 40 CFR 264.143, 264.145–151, 265.143 and 265.145–151, is July 13, 1981. The effective date for the interim final rules issued on January 23, 1981, in 40 CFR Parts 122, 264 and 265 is July 22, 1981.

FOR FURTHER INFORMATION CONTACT: The RCRA hazardous waste hotline, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 800/424-9346 (554-1404 in Washington, D.C.).

SUPPLEMENTAL INFORMATION: On January 12 and 23, 1981, EPA promulgated standards for permitting hazardous waste treatment and storage facilities (tanks, container storage facilities, piles, storage surface impoundments and incinerators) under the Resource Conservation and Recovery Act of 1976, as amended (RCRA). *See* 46 FR 2802 (January 12, 1981) and 46 FR 7666 (January 23, 1981). As required by Section 3010(b) of RCRA, these standards were scheduled to take effect six months after date of promulgation—*i.e.*, July 13 and 22, 1981.

Shortly after the January standards were published, the President issued Executive Order 12291 which sets forth requirements for agency regulatory activities. Section 7 of the Order directs Federal agencies to postpone the effective dates of regulations that did not become effective prior to February 17, 1981, unless (1) the Agency has prepared a Regulatory Impact Analysis (RIA) on the rule or (2) the Agency finds that there is good cause for the rule to become effective prior to completion of an RIA and so notified the Office of Management and Budget (OMB) at least fifteen days before the effective date of the rule.

EPA has received numerous telephone calls over the last several weeks asking what action the Agency planned to take under Section 7 of the Order with respect to the January 1981 hazardous waste permitting standards. The purpose of this notice is to advise the public that on June 26, 1981, EPA notified OMB that, for good cause, EPA intended to allow its January 12 and 23, 1981 waste permitting standards to go into effect as scheduled. In the letter notifying OMB, however, EPA indicated that it intended to initiate rulemaking to suspend the effective date of the standards for storage surface impoundments and incinerators, as applied to existing facilities, pending further evaluation of the appropriateness of those standards for existing facilities. EPA also stated that, pending completion of this rulemaking, it would not begin processing permits for existing storage surface impoundments and incinerators.[1] A copy of EPA's letter to OMB is attached as an Appendix to this notice.

OMB has not objected to EPA's proposed course of action.

Dated: July 17, 1981.

Anne M. Gorsuch,

Administrator.

U.S. Environmental Protection Agency, *Washington, D.C.*

Appendix

June 26, 1981.

Honorable David A. Stockman,
Director, Office of Management and Budget, Washington, D.C.
Attention: James C. Miller III, Administrator, Office of Information and Regulatory Affairs

Dear Mr. Stockman: On January 12 and 23 of this year, EPA promulgated interim final standards for permitting new and existing hazardous waste storage and treatment facilities (containers, tanks, waste piles, storage surface impoundments and incinerators) under the Resource Conservation and Recovery Act of 1976, as amended ("RCRA" or "Act").[1] As required by Section 3010(b) of RCRA, these standards are scheduled to take effect six months after date of promulgation—*i.e.*, July 13 and 23, 1981. Although a regulatory impact analysis of the standards is underway, it will not be completed by these effective dates.[2] The purpose of this letter is to advise you, as required by Section 7 of Executive Order 12291, that there is good cause for allowing these standards to go into effect prior to completion of that analysis.

Permitting Standards for New and Existing Tanks, Piles and Containers

There are several important reasons for allowing these standards to go into effect as scheduled for both new and existing facilities. First, they are subject to a fall, 1980, court-ordered promulation deadline. *State of Illinois v. Costle*, No. 78-1689 *et al.* (D.D.C., December 18, 1979). In our opinion, a suspension of the effective date of those standards (or their withdrawal) might well be found to be a violation of that order.[3]

Second, a suspension or withdrawal of the standards—either in their entirety or as applied to new facilities—would create a moratorium on the operation of new hazardous waste management facilities until revised standards could be promulgated and implemented. Under Section 3005 of the Act, new facilities (i.e., facilities which came into existence after November 19, 1980) cannot begin operations without a RCRA permit. RCRA permits, in turn, may be issued only after EPA has promulgated regulations establishing standards for hazardous waste management facilities under Section 3004 (Section 3005(c)). Thus, if EPA were to suspend the effective dates of or withdraw its permitting standards for tanks, waste piles and containers, no new facilities of these types could be issued the permits necessary to allow them to begin operations. This would not only exacerbate existing off-site capacity short-falls (thus increasing the risk of improper waste disposal), but also delay the start-up of new manufacturing operations which intend to manage wastes on-site.

[1] EPA will begin processing permits for the remaining facilities covered by the January 1981 standards (i.e., new and existing container, tank and waste pile storage facilities; new storage surface impoundments and new incinerators) as soon as the applicable regulations become effective.

[1] 46 *Fed. Reg.* 2802 (January 12, 1981) and 46 *Fed. Reg.* 7666 (January 23, 1981). Copies of these regulations are enclosed. These regulations also include minor amendments to the closure, post-closure and incinerator requirements applicable to existing facilities during interim status. These amendments were issued either in response to comment or in order to clarify the intent of the regulations. We intend to allow them to go into effect in July as scheduled.

[2] We expect to complete our regulatory impact analysis on the storage and treatment standards by mid-1982.

[3] Although the court's order technically only establishes deadlines for the "promulgation" of standards, we believe that any lengthy suspension of their effective date could well be found to constitute non-compliance with the order. This is true for two reasons. First, the six month effective date period under Section 3010(b) is fixed and mandatory, making it, in effect, an element of the promulgation. Second, promulgation of a rule, followed by its long term suspension, may well be considered by the court to constitute evasion of its order.

Finally, the regulated community and the general public have not seriously criticized the applicability of the standards to either new or existing facilities. The relatively few technical problems which have been raised by industry commenters should be resolved within the next month or two, long before EPA would actually issue permits to any of these facilities.

Permitting Standards for New and Existing Incinerators and Storage Surface Impoundments

We believe that there is also good cause for allowing the January standards for permitting incinerators and storage surface impoundments to go into effect for new facilities in July. They, too, are subject to the fall, 1980, court deadline in *State of Illinois v. Costle*. In addition, as noted above, a lengthy suspension of these regulations with respect to new facilities would substantially delay their commencing operations. Finally, the Agency has received relatively few comments from industry or the public suggesting that these standards are not appropriate for new facilities.

Industry has contended, however, that it will be extremely costly, and in some cases, technically infeasible, to retrofit existing facilities to meet these standards. We have not had an opportunity to evaluate the merits of these arguments in detail, and believe that we should do so in light of the data supporting the rules in order to fully consider the appropriateness of applying these standards to all types of existing facilities. The January rules were promulgated under considerable time constraints and it is possible that some of these considerations were not adequately evaluated. In light of industry's comments and because the 1980 amendments to the Act expressly require us, where appropriate, to distinguish between new and existing facilities in issuing standards under Section 3004, we believe it would be desirable to re-examine the January requirements for existing incinerators and storage surface impoundments before we begin issuing permits to them.

An immediate suspension of these regulations for existing facilities would make the Agency vulnerable to legal attack both in the *State of Illinois* v. *Costle* case and in the U.S. Court of Appeals.[4] However, if we obtain a modification of the court's order and go through proper rulemaking procedures, we can substantially reduce this risk, in the event a final decision is made to suspend the regulations.

Therefore, over the next two weeks, we intend to take the following actions:

1. First, we will file a motion with the court requesting an extension of the deadline for promulgating standards for existing storage surface impoundments and incinerators.

2. Second, we will publish for public comment a **Federal Register**, notice proposing to suspend or withdraw the January standards for existing storage surface impoundments and incinerators.

3. Finally, we will publish a **Federal Register** notice announcing that we will not begin processing permits for existing storage surface impoundments or incinerators until the court has acted on our motion and we have fully evaluated public comments on the proposed suspension.

If you have any questions about this letter or our proposed course of action with respect to the storage surface impoundment and incinerator regulations, please call Thornton W. Field of my staff at 755-0400.

Sincerely yours,

Anne M. Gorsuch,

Administrator.

Enclosures

cc: Frederick N. Khedouri

[FR Doc. 81-21737 Filed 7-23-81; 8:45 am]

BILLING CODE 6560-30-M

[4] As noted above, we believe a suspension of the regulations could well be found to be a violation of the court's order. Moreover, suspension of a regulation is considered a rulemaking under the Administrative Procedures Act and requires prior notice and comment unless there is "good cause" for issuing the suspension without it. *Council of the Southern Mountains, Inc.* v. *Donovan*, No. 80-2538 (D.C. Cir., April 16, 1981). The "good cause" exception has been interpreted quite narrowly. *Id.*

federal register

Friday
July 24, 1981

Part VII

Consumer Product Safety Commission

Agency Activities; Meetings Between Agency Personnel and Outside Parties, and Meetings Subject to the Government in the Sunshine Act

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1011, 1012, and 1013

Agency Activities; Meetings Policy—Meetings Between Agency Personnel and Outside Parties; Meetings Subject to the Government in the Sunshine Act

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: In this document, the Consumer Product Safety Commission sets forth its final regulation governing both Commission meetings subject to the Government in the Sunshine Act, 5 U.S.C. 552(b), (Sunshine Act Regulation) and meetings between agency personnel and outside parties (Meetings Policy).

EFFECTIVE DATE: July 24, 1981.

FOR FURTHER INFORMATION CONTACT: Alan H. Schoem, Alan R. Schwartz or Margot de Ferranti, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (202) 634–7770.

SUPPLEMENTARY INFORMATION: On December 12, 1980, the Commission published in the **Federal Register** (45 FR 82066) a proposed revision of its regulation governing both Commission meetings subject to the Government in the Sunshine Act (Sunshine Act regulation), proposed 16 CFR Part 1013, and meetings between agency personnel and outside parties (Meetings Policy), proposed 16 CFR Part 1012, and sought comments on the proposed revisions.

The proposed revision of the Commission's Meeting Policy primarily provided additional flexibility by delegating certain decisions and by establishing limited additional exemptions to the public attendance, advance notice and recordkeeping requirements. The proposed revision of the Commission Sunshine Act regulation provided technical amendments to bring the Commission's regulation into conformance with the provisions of the Sunshine Act in every particular. In addition, the proposed revisions separated the Commission's general public notice provisions, proposed 16 CFR Part 1011, the Commission's Meeting Policy, and the Commission's Sunshine Act regulation into three parts. Finally, the proposed revision contained editorial and non-substantive clarifying changes to make the regulations clearer.

Discussion of Comments

The Commission received no comments regarding the revision of its Sunshine Act regulation. Likewise, the Commission received no comments regarding the reorganization into three separate parts of the general public notice provisions, the Meetings Policy, and the Sunshine Act regulation. Therefore, the Commission finalizes the regulations in those respects.

The Commission received comments from Consumers Union, the National Consumers League, and two municipal consumer agencies on the proposed revisions to the Meetings Policy. All of the four comments focused solely on proposed § 1012.4(d) (10), which would provide an additional exemption to the public attendance requirement for meetings between agency staff and outside parties when the meeting "concerns matters at their very early, exploratory and information stages." The commenters asserted that exclusion of the public at the "early, exploratory" stages would deprive the Commission staff of information which might be significant to a Commission decision whether to act on the information received. The commenters contended further that absent public attendance, there was not adequate assurance that the public would be informed as to what went on during "early, exploratory" meetings.

After having considered the comments, the Commission has reconsidered proposed § 1012.4(d)(10) and has determined to delete proposed § 1012.4(d)(10).

In addition to the issue raised by the public comments, the Commission has further considered the effect of the exclusion from the definition of "outside parties" of "[o]fficers and employees of the Federal Government when acting in their official capacities." *See* § 1012.2(c) of the Proposed Revisions. The effect of this exclusion is to except from the advance public notice and public attendance requirements all meetings between Commission staff and Federal personnel.

There have been occasions, however, when Federal personnel meeting with Commission staff have advocated a particular course of Commission action on behalf of private parties who are represented at the meeting by the Federal personnel. The Commission wishes to make it clear that the advance public notice and public attendance requirements do apply to meetings at which Federal personnel will advocate a course of action on behalf of particular parties who would be "outside parties" subject to the meetings Policy's requirements.

Accordingly, the Commission has revised § 1012.2(c) as follows:

> Officers and employees of the Federal Government when acting in their official capacities (except when advocating a particular course of action on behalf of an outside party) are not outside parties.

Because the revisions to the regulations issued below concern statements of policy and because the Commission believes it is important that the revisions take effect as soon as possible in order to provide the additional flexibility gained by delegating certain decisions and establishing limited additional exemptions to the public attendance and advance notice requirements, and to clarify the existing regulation, the Commission for good cause finds that the revised regulations should take effect immediately.

Having considered the comments on the proposal and further considered the definition of "outside party" the Commission concludes that the revisions to the Notice of Agency Activities, the Sunshine Act Regulation and Meetings Policy should be issued as set forth below.

Title 16 of the Code of Federal Regulations is amended by revising part 1012 and adding parts 1011 and 1013 as follows:

PART 1011—NOTICE OF AGENCY ACTIVITIES

Sec.

1011.1 General policy considerations; scope.
1011.2 Definitions.
1011.3 General requirements for various kinds of meetings.
1011.4 Forms of advance public notice of meetings; Public Calendar/Master Calendar and **Federal Register**.

Authority: 5 U.S.C. 552b(g); Pub. L. 92–573, 86 Stat. 1207 (15 U.S.C. 2051–81) as amended by Pub. L. 94–284, 90 Stat. 503, Pub. L. 95–319, 92 Stat. 386, Pub. L. 95–631, 92 Stat. 3742; Pub. L. 90–189, 81 Stat. 568 (15 U.S.C. 1191–1204); Pub. L. 86–613, 74 Stat. 372, as amended by Pub. L. 89–756, 80 Stat. 1303, and Pub. L. 91–113, 83 Stat. 187 (15 U.S.C. 1261–74); Pub. L. 91–601, 84 Stat. 1670 (15 U.S.C. 1471–76) and the Act of Aug. 7, 1956, 70 Stat. 953 (15 U.S.C. 1211–14).

§ 1011.1 General policy considerations; scope.

(a) In order for the Consumer Product Safety Commission to properly carry out its mandate to protect the public from unreasonable risks of injury associated with consumer products, the Commission has determined that it must involve the public in its activities to the fullest possible extent.

(b) To ensure public confidence in the integrity of Commission decisionmaking, the Agency, to the fullest possible extent, will conduct its business in an open manner free from any actual or apparent impropriety.

(c) This Part 1011 presents general provisions concerning public notice for various types of Agency activities.

§ 1011.2 Definitions.

As used in this Part 1011, the following terms shall have the meanings set forth:

(a) *Agency.* The entire organization which bears the title Consumer Product Safety Commission (CPSC).

(b) *Agency staff.* Employees of the Agency other than the five Commissioners.

(c) *Commissioner.* An individual who belongs to the collegial body heading the CPSC.

(d) *Commission.* The Commissioners of the Consumer Product Safety Commission acting in an official capacity.

(e) *Commission Meeting.* A meeting of the Commissioners subject to the Government in the Sunshine Act, 5 U.S.C. 552b. This term is more fully defined in the Commission's regulations under the Government in the Sunshine Act, 16 CFR Part 1013.

(f) *Agency meeting.* A meeting between Agency personnel, including individual Commissioners, and outside parties. This term and the term "outside party" are more fully defined in the Commission's Meeting Policy, 16 CFR Part 1012.

§ 1011.3 General requirements for various kinds of meetings.

Meetings which involve Agency staff or the Commissioners, other than Commission meetings, are classified in the following categories and shall be held according to the procedures outlined within each category.

(a) *Hearings.* Hearings are public inquiries held by direction of the Commission for the purpose of fact finding or to comply with statutory requirements. The Office of the Secretary is responsible for providing transcription services at the hearings. Where possible, notice of forthcoming hearings will be published in the Public Calendar and the **Federal Register** at least 30 days before the date of the hearings.

(b) *Meetings between Commissioners or Agency staff and outside parties.* The requirements for Agency meetings between Commissioners or Agency staff and outside parties involving substantial interest matters are contained in 16 CFR Part 1012.

(c) *Commission meetings.* The requirements for Commission meetings under the Government in the Sunshine Act, 5 U.S.C. 552b are contained in 16 CFR Part 1013.

(d) *Staff meetings.* As a general rule, only Agency employees attend staff meetings. At the discretion of the participants, Staff meetings may be listed on the Public Calendar and attendance by the public may be permitted. Recordkeeping is at the discretion of the participants.

(e) *Advisory committee meetings.* Meetings of the Agency's advisory committees are scheduled by the Commission. Advance notice will be given in both the Public Calendar and the **Federal Register.** Advisory committee meetings serve as a forum for discussion of matters relevant to the Agency's statutory responsibilities with the objective of providing advice and recommendations to the Commission. The Agency's advisory committees are the National Advisory Committee for the Flammable Fabrics Act, the Product Safety Advisory Council, the Technical Advisory Committee on Poison Prevention Packaging and the Toxicological Advisory Board. The Office of the Secretary is responsible for the recordkeeping for such meetings. The Commission's regulation for the management of its advisory committees is set out in 16 CFR 1018.

§ 1011.4 Forms of advance public notice of meetings; Public Calendar/Master Calendar and Federal Register.

Advance notice of Agency activities is provided so that members of the public may know of and participate in these activities to the fullest extent possible. Where appropriate, the Commission uses the following types of notice for both Agency meetings subject to 16 CFR Part 1012 and Commission meetings subject to 16 CFR Part 1013:

(a) *Public Calendar/Master Calendar.* (1) The printed Public Calendar and the Master Calendar maintained in the Office of the Secretary are the principal means by which the Agency notifies the public of its day-to-day activities. The Public Calendar and/or Master Calendar provide advance notice of public hearings, Commission meetings, Agency meetings with outside parties involving substantial interest matters, other Agency meetings, selected staff meetings, advisory committee meetings, and other activities such as speeches and participation in panel discussions, regardless of the location. The Public Calendar also lists recent CPSC **Federal Register** issuances and Advisory Opinions of the Office of the General Counsel.

(2) Upon request in writing to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, any person or organization will be sent the Public Calendar on a regular basis free of charge. In addition, interested persons may contact the Office of the Secretary to obtain information from the Master Calendar which is kept current on a daily basis.

(3) The Public Calendar and the Master Calendar, supplemented by meeting summaries, are intended to serve the requirements of section 27(j)(8) of the Consumer Product Safety Act (15 U.S.C. 2076(j)(8)).

(b) *Federal Register.* **Federal Register** is the publication through which official notifications, including formal rules and regulations of the Agency, are made. Because the Public Calendar and/or Master Calendar are the primary devices through which the Agency notifies the public of its routine, daily activities, the **Federal Register** will be utilized only when required by the Government in the Sunshine Act (as provided in 16 CFR Part 1013) or other applicable law, or when the Agency believes that the additional coverage which the **Federal Register** can provide is necessary to assist in notification to the public of important meetings.

PART 1012—MEETINGS POLICY—MEETINGS BETWEEN AGENCY PERSONNEL AND OUTSIDE PARTIES

Sec.

1012.1 Scope.
1012.2 Definitions.
1012.3 Advance public notice of agency meetings.
1012.4 Public attendance at agency meetings.
1012.5 Recordkeeping for agency meetings.
1012.6 The news media.
1012.7 Telephone conversations.

Authority: Pub. L. 92-573, 86 Stat. 1207 (15 U.S.C. 2051-81) as amended by Pub. L. 94-284, 90 Stat. 503, Pub. L. 95-319, 92 Stat. 386, Pub. L. 95-631, 92 Stat. 3742; Pub. L. 90-189, 81 Stat. 568 (15 U.S.C. 1191-1204); Pub. L. 86-613, 74 Stat. 372, as amended by Pub. L. 89-756, 80 Stat. 1303, and Pub. L. 91-113, 83 Stat. 187 (15 U.S.C. 1281-74); Pub. L. 91-601, 84 Stat. 1670 (15 U.S.C. 1471-76) and the Act of Aug. 7, 1956, 70 Stat. 953 (15 U.S.C. 1211-14).

§ 1012.1 General Policy considerations; Scope.

(a) To achieve its goals of involving the public in its activities and conducting its business in an open manner, the Agency, whenever practicable, shall notify the public in advance of all meetings involving matters of substantial interest held or attended by its personnel, and shall permit the public to attend such meetings. Furthermore, to ensure the widest possible exposure of the details of such meetings, the Agency will keep

records of them freely available for inspection by the public.

(b) This Part 1012, the Agency's Meetings Policy, sets forth requirements for advance public notice, public attendance, and recordkeeping for Agency meetings.

§ 1012.2 Definitions.

(a) As used in this Part 1012, the following terms have the respective meanings set forth in paragraphs (a)–(d) of § 1011.2 of this subchapter: "Agency," "Agency staff," "Commissioner," "Commission."

(b) *Agency meeting.* Any face-to-face encounter, other than a Commission meeting subject to the Government in the Sunshine Act, 5 U.S.C. 552b, and Part 1013, in which one or more employees, including Commissioners, discusses with an outside party any subject relating to the Agency or any subject under its jurisdiction. The term Agency meeting does not include telephone conversations, but see § 1012.8 which relates to telephone conversations.

(c) *Outside party.* Any person not an employee, not under contract to do work for the Agency, or not acting in an official capacity as a consultant to the Consumer Product Safety Commission, such as advisory committee members or offeror personnel. Examples of persons falling within this definition are representatives from industry and consumer groups. Members of the news media when acting in a newsgathering capacity are not outside parties. (See also § 1012.7.) Officers and employees of the Federal Government when acting in their official capacities (except when advocating a particular course of action on behalf of an outside party) are not outside parties.

(d) *Substantial interest matter.* Any matter, other than that of a trivial nature, that pertains in whole or in part to any issue that is likely to be the subject of a regulatory or policy decision by the Commission. Pending matters, i.e., matters before the Agency in which the Agency is legally obligated to make a decision, automatically constitute substantial interest matters. Examples of pending matters are: Scheduled administrative hearings; matters published for public comments; petitions under consideration; and mandatory standard development activities. The following are some examples of matters that do not contitute substantial interest matters: Inquiries concerning the status of a pending matter; discussions relative to general interpretations of existing laws, rules, and regulations; inspection of nonconfidential CPSC documents by the public; negotiations for contractual services; and routine CPSC activities such as recruitiment, training, meetings involving consumer deputies, or meetings with hospital staff and other personnel involved in the National Electronic Injury Surveillance System.

§ 1012.3 Advance public notice of agency meetings.

(a) Commissioners and Agency employees are responsible for reporting meeting arrangements for Agency meetings to the Office of the Secretary so that they may be published in the Public Calendar or entered on the Master Calendar at least seven days before a meeting, except as provided in paragraph (d) of this section. These reports shall include the following information:

(1) Probable participants and their affiliations;

(2) Date, time and place of the meeting;

(3) Subject of the meeting (as fully and precisely described as possible);

(4) Who requested the meeting;

(5) Whether the meeting involves matters of substantial interest;

(6) Notice that the meeting is open or reason why the meeting or any portion of the meeting is closed (e.g., discussion of trade secrets); and

(7) Names and telephone number of the CPSC host or CPSC contact person.

(b) Once a report has been made to the Office of the Secretary, Agency employees subsequently desiring to attend the meeting need not notify the Office of the Secretary.

(c) When there is no opportunity to give seven days advance notice of a meeting, Agency employees (other than the Commissioners or their personal staff) who desire to hold or attend such a meeting must obtain the approval of the General Counsel or his or her designee. Requests for waiver of the seven-day advance notice requirement by members of the staff who report to the Executive Director may only be submitted to the General Counsel or his or her designee in writing by the Executive Director or his or her designee. Personal staff of Commissioners must obtain the approval of their respective Commissioners. If the short notice is approved, the Agency employee must notify the Office of the Secretary in advance of the meeting to record the meeting on the Master Calendar. The Office of the Secretary shall publish notice of the meeting as an addendum to the next Public Calendar.

(d) Exceptions. The notice requirement shall not apply to:

(1) Meetings with outside parties not involving substantial interest matters (although such meetings should be limited where the public interest would be served);

(2) Meetings with outside parties held during the normal course of surveillance, inspection, or investigation under any of the Acts administered by the Commission, including informal citation hearings under the Federal Hazardous Substance Act or the Poison Prevention Packaging Act;

(3) Meetings with outside parties concerning the settlement or negotiation of an individual case, including proposed remedial action, or meetings concerning any administrative or judicial action in which the outside party is a participant, party, or *amicus curiae;*

(4) Routine speeches given by CPSC personnel before outside parties. However, for information purposes, personnel are encouraged to submit advance notice of these speeches to the Office of the Secretary for inclusion in the Public Calendar;

(5) Meetings with other Federal personnel that are also attended by outside parties except where a specific matter to be discussed is also pending before the Commission or its staff;

(6) Meetings with state, local or foreign government personnel concerning intergovernmental cooperative efforts and not the advocacy of a particular course of action on behalf of a constituency of the governmental entity;

(7) Meetings or discussions with or at the request of either members of Congress and their staffs relating to legislation, appropriation or oversight matters, or Management and Budget personnel relating to legislation or appropriation matters;

(8) Pre-proposal conferences involving confidential contracts made pursuant to 41 U.S.C. 252(c)(12) in connection with potential litigation matters.

§ 1012.4 Public attendance at agency meetings.

(a) Any person may attend any meeting involving a substantial interest matter unless that meeting has been listed as a closed meeting. For meetings not involving substantial interest matters, the chairperson of the meeting may exercise his or her discretion to allow attendance by a member of the public.

(b) When meetings between Agency employees and outside parties are open to the public, attendance may be limited by space. When feasible, a person or organization desiring to attend such a meeting should give at least one day advance notice to one of the employees

holding or attending the meeting so that sufficient space can be arranged for all those wishing to attend.

(c) Members of the public attending Agency meetings generally may observe only. The chairperson of the meeting may exercise his or her discretion to permit members of the public to participate as well.

(d) The following Agency meetings are not open to the public:

(1) Meetings, or, if possible, portions of meetings where the General Counsel or his or her designee has determined that proprietary data are to be discussed in such a manner as to imperil their confidentiality;

(2) Meetings held by outside parties at which limits on attendance are imposed by lack of space, provided that such meetings are open to the news media;

(3) Meetings with outside parties held during the normal course of surveillance, inspection, or investigation under any of the Acts administered by the Commission, including informal citation hearings under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act;

(4) Meetings with outside parties concerning the settlement or negotiation of an individual case, including proposed remedial action, or meetings concerning any administrative or judicial action in which the outside party is a participant, party, or *amicus curiae;*

(5) Meetings with other Federal personnel that are attended by outside parties except where a specific matter to be discussed is also pending before the Commission or its staff;

(6) Meetings with state, local or foreign government personnel concerning intergovernmental cooperative efforts and not the advocacy of a particular course of action on behalf of a constituency of the governmental entity;

(7)(i) Meetings between Agency staff (other than Commissioners and their personal staff) and an outside party when the General Counsel or his or her designee determines that extraordinary circumstances require that the meeting be closed. Requests for exemption by members of the staff who report to the Executive Director may be submitted to the General Counsel or his or her designee in writing only by the Executive Director or his or her designee. In such a case, the reasons for closing the meeting or a portion of the meeting shall be stated in the Public Calendar notice announcing the meeting;

(ii) Meetings between a Commissioner (or his or her personal staff) and an outside party when, in the opinion of the Commissioner, extraordinary circumstances require that the meeting be closed. In such a case, the reasons for closing the meeting or a portion of the meeting must be stated in the Public Calendar notice announcing the meeting;

(8) Meetings or discussions with or at the request of either members of Congress and their staffs relating to legislation, appropriation or oversight matters, or Management and Budget personnel relating to legislation or appropriation matters;

(9) Pre-proposal conferences involving confidential contracts made pursuant to 41 U.S.C. 252(c)(12), in connection with the potential litigation matters;

§ 1012.5 Recordkeeping for agency meetings.

(a) This section describes and establishes requirements for the two types of records maintained for Agency meetings, Agency meeting summaries and transcripts.

(b) Agency Meeting Summaries. Agency meeting summaries are written records settling forth the issues discussed at all Agency meetings with outside parties involving substantial interest matters. Any Commission employee who holds or attends an Agency meeting involving a substantial interest matter must prepare a meeting summary. However, only one agency meeting summary is required for each meeting even if more than one CPSC employee holds or attends the meeting. Agency meeting summaries are generally available to the public in the Agency's Public Reading Room in the Office of the Secretary as described in subsection (2).

(1) An agency meeting summary should state the essence of all substantive matters relevant to the Agency, especially any matter discussed which was not listed on the Public Calendar, and should describe any decisions made or conclusions reached regarding substantial interest matters. An agency meeting summary should also indicate the date of the meeting and the identity of persons who attended.

(2) An agency meeting summary or a notice of cancellation of the meeting must be submitted to the Office of the Secretary within twenty (20) calendar days after the meeting for which the summary is required. The Office of the Secretary shall maintain a file of the meeting summaries in chronological order, which shall be available to the public to the extent permitted by law.

(c) Transcripts. Transcripts are generally taken at public hearings and certain Agency meetings when complex subjects indicate *verbatim* records are desirable. The transcript may also include exhibits submitted to be part of the formal record of an Agency meeting. Copies of such transcripts are placed on file for public inspection in the Office of the Secretary.

§ 1012.6 The news media.

The Agency recognizes that the news media occupy a unique position in informing the public of the Agency's activities. The Commission believes that the inherently public nature of the news media allows their activities to be exempt from the requirements of this part whenever Agency meetings are held with the news media for the purpose of informing them about Agency activities. Such Agency meetings are not exempt in the event that any representative of the news media attempts to influence any Agency employee on a substantial interest matter.

§ 1012.7 Telephone conversations.

(a) Telephone conversations present special problems regarding Agency meetings. The Commission recognizes that persons outside the Agency have a legitimate right to receive information and to present their views regarding Agency activities. The Commission also recognizes that such persons may not have the financial means to travel to meet with Agency employees. However, because telephone conversations, by their very nature, are not susceptible to public attendance, or participation, Agency employees must take care to ensure that telephone conversations are not utilized to circumvent the provisions of this Part.

(b) Two basic rules apply to telephone conversations:

(1) Any Agency employee holding a telephone conversation in which substantial interest matters are discussed with an outside party must prepare a telephone call summary of the conversation. The summary must meet the requirements of § 1012.5(b), and must be submitted to the Office of the Secretary within twenty (20) calendar days of the conversation. The Office of the Secretary shall maintain file of telephone call summaries in chronological order which shall be available to the public to the extent permitted by law.

(2) All Agency employees must exercise sound judgment in discussing substsantial interest matters during a telephone conversation. In the exercise of such discretion Agency employees should not hesitate to terminate a telephone conversation and insist that the matters being discussed be

postponed until an Agency meeting with appropriate advance public notice may be scheduled, or, if the outside party is financially or otherwise unable to meet with the Agency employee, until the matter is presented to the Agency in writing.

PART 1013—GOVERNMENT IN THE SUNSHINE ACT, RULES FOR COMMISSION MEETINGS

Sec.

1013.1 General policy considerations; scope.
1013.2 Definitions.
1013.3 Announcement of commission meetings and changes after announcement.
1013.4 Public attendance at commission meetings.
1013.5 Recordkeeping for commission meetings.
1013.6 Public availability of transcripts, recordings and minutes of commission meetings.

Authority: 5 U.S.C. 552b(g).

§ 1013.1 General policy considerations; scope.

(a) In enacting the Government in the Sunshine Act, 5 U.S.C. 552b, the Congress stated the policy that, to the fullest practicable extent, the public is entitled to information regarding the decisionmaking processes of the Federal Government. The purpose of the Government in the Sunshine Act is to provide the public with such information while protecting both the rights of individuals and the ability of the Government to carry out its responsibilities. When the Commissioners of the Consumer Product Safety Commission hold meetings for the purpose of jointly conducting or disposing of Commission business they will conduct these meetings in accordance with the provisions of the Government in the Sunshine Act.

(b) This Part 1013 prescribes rules the Commission follows in carrying out the Government in the Sunshine Act.

§ 1013.2 Definitions.

(a) As used in this part 1013, the following terms shall have the respective meanings set forth in paragraphs (a), (c) and (d) of § 1011.2 of this subchapter: "Agency," "Commissioner," "Commission."

(b) *Majority of the Commission.* Three or more of the Commissioners.

(c) *Commission meeting.* The joint deliberations of at least a majority of the Commission where such deliberations determine or result in the joint conduct or disposition of official Agency business. This term does not include meetings required or permitted by § 1013.4(b) (to determine whether a meeting will be open or closed), meetings required or permitted by § 1013.3(e) (to change the subject matter of a meeting or the determination to open or close a meeting after the public announcement) or meetings required or permitted by 1013.3(c) (to dispense with the one week advance notice of a meeting).

§ 1013.3 Announcement of commission meetings and changes after announcement.

(a) The Secretary of the Commission is responsible for preparing and making public the announcements and notices relating to Commission meetings that are required in this part.

(b) The Agency shall announce each Commission meeting in the Public Calendar or Master Calendar at least one week (seven calendar days) before the meeting. The Agency shall concurrently submit the announcement for publication in the **Federal Register.** The announcement and the **Federal Register** notice shall contain the following information:

(1) The date, time, and place of the meeting;

(2) The subject matter of the meeting;

(3) Whether the meeting will be open or closed to the public;

(4) The name and phone number of the official who responds to requests for information about the meeting.

(c) If a majority of the Commission determines by recorded vote that Agency business requires calling a meeting without seven calendar days advance public notice, the Office of the Secretary shall announce this determination in the Public Calendar or Master Calendar at the earliest practicable time and shall concurrently transmit the announcement for publication in the **Federal Register.**

(d) When necessary and at the direction of the Chairman, the Secretary shall change the time of a Commission meeting after the announcement in the Public Calendar or Master Calendar. Any such change shall be entered on the Master Calendar and such other notice shall be given as is practicable.

(e) After announcement of a Commission meeting in the Public Calendar or Master Calendar, the Commission may change the subject matter of a Commission meeting or the decision to open or close a Commission meeting or portion thereof to the public, only if a majority of the Commission determines by recorded vote that Agency business so requires, and only if a majority of the Commission determines by recorded vote that no earlier announcement of the change was possible. The Commission shall announce the change in the Public Calendar or Master Calendar at the earliest practicable time before the meeting and shall concurrently transmit the announcement for publication in the **Federal Register.** Announcement of the change shall include the vote of each Commissioner upon the change. (See also § 1013.4(d) for requirements for Commission reconsideration of a decision to open or close a meeting to the public.)

§ 1013.4 Public attendance at commission meetings.

(a) Attendance by the public. Every portion of every Commission meeting shall be open to public observation except as provided in paragraph (b) of this section. Notwithstanding the applicability of the exemptions contained in paragraph (b) of this section, a Commission meeting or portions thereof shall be open to public observation when the Commission determines that the public interest so requires. The Commission shall take into account in all cases the relative advantages and disadvantages to the public of conducting the Commission meeting in open session. The number of public observers shall be limited only by availability of space. Attendance by the public shall be limited to observation and shall not include participation. To the extent their use does not interfere with the conduct of open meetings, cameras and sound-recording equipment may be used at open Commission meetings. The Chairman or presiding Commissioner shall insure that use of such equipment does not disrupt the meeting.

(b) Exemptions to the requirement of openness. The requirement in paragraph (a) of this section that all Commission meetings be open to public observation shall not apply to any Commission meeting or portion thereof for which the Commission has determined in accordance with the procedures for closing meetings set forth in paragraph (c) of this section, that such meeting or portion thereof is likely to:

(1) Disclose matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and in fact are properly classified pursuant to such Executive Order;

(2) Relate solely to the internal personnel rules and practices of the Agency;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided,* That such statute (i) requires that the matters be withheld from the public in such a

manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes or information which if written would be contained in such records, but only to the extent that the production of such records or information would, (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures or, (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Agency action. This provision does not apply in any instance where the Agency has already disclosed to the public the content or nature of its proposed action, or where the Agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the Agency's issuance of a subpoena, or the Agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(c) Procedure for closing Commission Meetings. The following procedure shall be followed in closing a Commission meeting or portion thereof to public observation:

(1) A majority of the Commission must vote to close a meeting or portion thereof to public observation pursuant to paragraph (b) of this section. A separate vote of the Commission shall be taken for each matter with respect to which a Commission meeting is proposed to be closed to public observation. Each such vote may, at the discretion of the Commission, apply to that portion of any meeting held within the following thirty days in which such matter is to be discussed. The vote of each Commissioner participating in such vote shall be recorded and no proxies shall be allowed.

(2) Any person whose interest may be directly affected if a portion of a Commission meeting is open may request in writing to the Office of the Secretary that the Commission close that portion of the meeting on the basis of paragraph (b)(5), (6) or (7) of this section. The Commission shall vote on such requests if at least one Commissioner desires to do so.

(3) Before the Commission may hold a closed meeting the General Counsel must certify that in his or her opinion, the meeting may properly be closed to the public. Such certification shall be in writing and shall state each relevant exemptive provision.

(4) Within one day of a vote in accordance with paragraph (c) (1) or (2) of this section to close a Commission meeting or portion thereof, the Secretary shall make available to the public a notice setting forth:

(i) The results of the vote reflecting the vote of each Commissioner;

(ii) A full explanation of the action of the Commission closing the meeting or portion thereof, including reference to the specific basis for such closing (see paragraph (b) of this section) and an explanation, (without disclosing exempt information), of why the Commission concludes on balance, taking into account the relative advantages and disadvantages to the public of conducting the meeting in open or closed session, that the public interest would best be served by closing the meeting;

(iii) A list of all non-Agency personnel expected to attend the meeting and their affiliations; and

(iv) A certification by the General Counsel that in his or her opinion, the meeting may properly be closed to the public. If a vote to close a Commission meeting takes place on the same day as the meeting, the certification must be made available to the public before the meeting is convened.

(5) The public release of the portion of the written statement required by paragraph (c)(4)(ii) of this section may be delayed upon a determination by the Commission, by recorded vote, that such a notice, or portion thereof, would disclose information which may be withheld in accordance with paragraphs (b)(1) through (10) of this section.

(d) Reconsideration of a decision to open or close a Commission meeting. The Commission may, in accordance with the procedures in § 1013.3(3) or § 1013.4(c)(2) reconsider its decision to open or close a Commission meeting when it finds that the public interest so requires.

§ 1013.5 Recordkeeping requirements.

(a) Commission meetings, transcripts, recordings, or minutes

(1) The Agency shall maintain a complete transcript or electronic recording of each Commission meeting, whether open or closed, except that in the case of a Commission meeting or portion thereof closed to the public pursuant to subparagraph (10) of § 1013.4(b), the Agency may elect to maintain a set of meeting minutes instead of a transcript or a recording. Minutes of such closed Commission meetings shall:

(i) Fully and clearly describe all matters discussed, and

(ii) Provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each Commissioner on the question). All documents considered in connection with any action shall be identified in the meeting minutes.

(2) The transcript, recording or minutes of closed Commission meetings shall include the certification by the General Counsel or by his or her designee, required by § 1013.4(c)(3) and a statement by the presiding Commissioner setting forth the date, time and place of the meeting and the persons present.

(3) The transcript, recording, or minutes of any Commission meeting may include attachments such as Commission opinions, briefing papers, or other documents presented at the meeting.

(4) The transcript and accompanying material shall be maintained by the Secretary for a period of at least two years after the meeting, or until one year after the conclusion of any Agency proceeding with respect to which the meeting, or portion thereof, was held, whichever occurs later.

(b) Minutes of Commission Decisions. Minutes of Commission Decisions summarizing the issues presented to the Commission for decision and indicating the vote of each Commissioner document the decisions of the Commission, whether made at open or closed meetings or by ballot vote. The Commission's final Minutes of Commission Decisions, issued by the Office of the Secretary, constitute the official means of recording the decisions of the Commission and the votes of individual Commissioners.

§ 1013.6 Public availability of transcripts, recordings and minutes of commission meetings.

(a) Availability of transcripts, recordings or minutes. The Agency shall make available to the public the transcript, recording or minutes of Commission meetings. However, unless the Commission finds that the public interest requires otherwise, any portion of the transcript, recording or minutes of a closed Commission meeting which is determined to contain information which may properly be withheld from the public on the basis of subparagraphs (1) through (10) of § 1013.4(b) need not be made available to the public.

(b) Procedures for making available transcripts, recordings or meeting minutes. Meeting records will be made available for inspection, or copies will be furnished, as requested, in accordance with the following procedures.

(1) Requests. Requests for inspection or copies shall be in writing addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. A request must reasonably describe the Commission meeting, or portion thereof, including the date and subject matter or any other information which may help to identify the requested material.

(2) Responses to requests. The responsibility for responding to requests for meeting records is vested in the Secretary of the Commission. In any case where the Secretary or his or her designee, in his or her discretion, determines that a request for an identifiable meeting record should be initially determined by the Commission, the Secretary or his or her designee may certify the matter to the Commission for decision. In that event, the Commission decision shall be made within the time limits set forth in paragraph (b)(5)(iii) of this section and shall be final.

(3) Time limitations on responses to requests. The Secretary or his or her designee shall respond to all written requests for copies of meeting records within ten (10) working days. The time limitations on responses to requests shall begin to run as of the time a request for records is received and date stamped by the Office of the Secretary.

(4) Responses: Form and content. When a requested meeting record has been identified and is available for disclosure the requester shall either be informed as to where and when the records will be made available for inspection or be supplied with a copy. A response denying a written request for a meeting record of a closed Commission meeting shall be in writing signed by the Secretary and shall include:

(i) A reference to the specific exemptions under the Government in the Sunshine Act (5 U.S.C. 552b(c)) authorizing the denial; and

(ii) A statement that the denial may be appealed to the Commission pursuant to subparagraph (5) of this paragraph.

(5) Appeals to the Commissioners.

(i) When the Secretary or his or her designee has denied a request for records in whole or in part, the requester may, within 30 days of its receipt, appeal the denial to the Commissioners of the Consumer Product Safety Commission by writing to the attention of the Chairman, Consumer Product Safety Commission, Washington, D.C. 20207.

(ii) The Commission will act upon an appeal within 20 working days of its receipt. The time limitations on an appeal begin to run as of the time an appeal is received by the Office of the Chairman and date stamped.

(iii) The Commission's action on appeal shall be in writing, signed by the Chairman of the Commission if the appeal is denied and shall identify the Commissioners who voted for a denial. A denial in whole or in part of a request on appeal for records of a closed meeting shall set forth the exemption relied on and a brief explanation (without disclosing exempt information) of how the exemption applies to the records withheld. A denial in whole or in part shall also inform the requester of his or her right to seek judicial review as specified in 5 U.S.C. 552b(h).

(6) Fees. (i) Fees shall be charged for copies of transcriptions of recording or minutes in accordance with the schedule contained in paragraph (b)(6)(iii) of this section.

(ii) There shall be no fee charged for services rendered in connection with production or disclosure of meeting records unless the charges, calculated according to the schedule below, exceed the sum of $25.00. Where the charges are calculated to be an amount in excess of $25.00, the fee charged shall be the difference between $25.00 and the calculated charges.

(iii) The schedule of charges for furnishing copies of meeting records is as follows:

(A) Reproduction, duplication or copying of transcripts or minutes: 10 cents per page.

(B) Reproduction of recordings: actual cost basis.

(C) Transcription (where meeting records are in the form of a recording only): actual cost basis.

(D) Postage: actual cost basis.

Dated: July 17, 1981.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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