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Highlights

39107 **Amending the Manual for Courts-Martial, United States, 1969 (Revised Edition)** Executive order.

39226 **Continental Shelf** Interior/Sec'y proposes 5-Year OCS Oil and Gas Leasing Program.

39388 **Ocean Thermal Energy** Commerce/NOAA establishes legal system and licensing process to facilitate commercial development of conversion facilities and plantships. (Part IV of this issue)

39426 **Hazardous Waste** EPA proposes to reduce paperwork requirements for generators, transporters, and treatment, storage and disposal facilities. (Part VI of this issue)

39125 **Petroleum** Commerce/ITA removes quantitative limitations for export of low-octane, high-parafinnic naphthas for production of petrochemicals.

39153 **Public Assistance Programs** USDA/FNS proposes to enable HHS to conduct Aid to Families with Dependent Children/Food Stamp Consolidation Project.

39167 **Armed Forces** DOD/Sec'y proposes to eliminate residential treatment centers as authorized providers under the Civilian Health and Medical Program of the Uniformed Services.

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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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39123 **Mortgages** FHLBB reiterates policy on "due-on-sale" clauses in loan contracts.

39139 **Copyright** Copyright Royalty Tribunal announces cost of living adjustment of 9.8% for compulsory royalty rates paid by non-commercial broadcasting for use of certain copyrighted works.

39185 **Radio** FCC proposes to allow inland expansion of non-Government radiolocation in the 420–450 MHz band.

39145 **Television** FCC permits use of subcarrier frequencies in the aural baseband of transmitters.

39162 **Agricultural Resources** USDA/ASCS proposes to carry out Agricultural and Emergency Conservation Programs.

39122 **Grains** USDA/FmHA provides for rotation of crops covered by an FmHA lien and the Commodity Credit Corporation Grain Reserve Program.

39274 **Meat and Meat Products** USDA/FSIS proposes to modify requirements for Mechnically Processed (Species) Product. (Part II of this issue)

39159 USDA/FSIS proposes to reduce requirements for transportation of certain edible and inedible meat and meat food products.

39129 **Allergenic Products** HHS/FDA requires new potency test, revised labeling, and lot-by-lot release standards for certain ragweed pollen extracts.

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39183 **Regulatory Flexibility Review Plan** FCC

39255 **Privacy Act Document** NFAH

39262 **Sunshine Act Meetings**

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Presidential Documents

Title 3—

The President

Executive Order 12315 of July 29, 1981

Amendments to the Manual for Courts-Martial, United States, 1969 (Revised Edition)

By the authority vested in me as President by the Constitution of the United States and by Chapter 47 of Title 10 of the United States Code (the Uniform Code of Military Justice), in order to prescribe amendments to the Manual for Courts-Martial, United States, 1969 (Revised edition), prescribed by Executive Order No. 11476, as amended by Executive Order No. 11835, Executive Order No. 12018, Executive Order No. 12198, Executive Order No. 12233, and Executive Order No. 12306, it is hereby ordered as follows:

Section 1. The fifth paragraph of paragraph 70*a* of the Manual for Courts-Martial, United States, 1969 (Revised edition), is amended by inserting the following after the first sentence: "If the plea is accepted, such evidence shall be introduced during the presentencing proceedings under paragraph 75, except when the evidence is otherwise admissible on the merits.".

Sec. 2. Paragraph 75 of the said Manual for Courts-Martial is amended to read as follows:

"75. Presentencing Procedure. *a. General* (1) *Procedure.* After findings of guilty have been announced, the prosecution and defense may present appropriate matter to aid the court in determining an appropriate sentence. Such matter shall be presented pursuant to this paragraph and, when presented, shall ordinarily follow the following sequence:

"(a) Presentation by the trial counsel of service data relating to the accused taken from the charge sheet.

"(b) Presentation by the trial counsel of personal data relating to the accused and of the character of the accused's prior service as reflected in the personnel records of the accused.

"(c) Presentation by the trial counsel of evidence of prior convictions, military or civilian.

"(d) Presentation by the trial counsel of evidence of aggravation.

"(e) Presentation by the defense of evidence in extenuation or mitigation or both.

"(f) Rebuttal.

"(g) Argument by the trial counsel on sentence.

"(h) Argument by the defense counsel on sentence.

"(i) Rebuttal arguments in the discretion of the military judge or the president of a special court-martial without a military judge.

"(2) *Imposition of sentence.* Sentencing will be imposed in all cases without unreasonable delay.

"(3) *Sentencing matter and findings.* Evidence that is presented to the court after findings of guilty have been announced may not be considered as evidence against the accused in determining the legal sufficiency of the findings of guilty upon review. If any matter inconsistent with the plea of guilty is received or if it appears from any matter received that a plea of guilty was entered improvidently, action should be taken as outlined in paragraph 70.

"*b. Matter to be presented by the prosecution.*

"(1) *Service data from the charge sheet.* The trial counsel shall inform the court of the data on the charge sheet relating to the age, pay, and service of the accused and the duration and nature of any restraint imposed upon the accused before trial. Subject to the discretion of the military judge or president of a special court-martial without a military judge, this may be accomplished by reading the material from the charge sheet or by supplying the court with an appropriate statement of such matter. If the defense objects to the data as being materially inaccurate or imcomplete or as containing specified objectional matter, the military judge or president of a special court-martial without a military judge shall determine the issue. Objections not asserted are waived.

"(2) *Personal data and character of prior service of the accused.* Under regulations of the Secretary concerned, the trial counsel may obtain and introduce from the personnel records of the accused evidence of the marital status of the accused and the number of dependents, if any, of the accused, and evidence of the character of prior service of the accused. Such evidence includes copies of reports reflecting the past military efficiency, conduct, performance, and history of the accused and evidence of any disciplinary actions to include punishments under Article 15. See paragraph 75*b*(3) for evidence of prior convictions of the accused. Personnel records of the accused include all those records made or maintained in accordance with departmental regulations that reflect the past military efficiency, conduct, performance, and history of the accused. If the accused objects to the information as being inaccurate or incomplete in a specific respect, or as containing matter that is not admissible under the Military Rules of Evidence as applied to the issue of sentencing, the matter shall be determined by the military judge or president of a special court-martial without a military judge. Objections not asserted are waived.

"(3) *Evidence of prior convictions of the accused.* (a) *Generally.* The trial counsel may introduce evidence of prior military or civilian convictions of the accused. Although such convictions need not be similar to the offense of which the accused has been found guilty, they must be for offenses committed during the six years next preceding the commission of any offense of which the accused has been found guilty. In computing the six-year period, periods of unauthorized absence demonstrated by the findings in the case or by evidence of previous convictions should be excluded. A vacation of a suspended sentence is not itself a conviction and is not admissible as such, but may be admissible under paragraph 75*b*(2) as reflected of the character of the prior service of the accused.

"(b) *Finality.* Before a conviction is admissible under this paragraph, all direct review and appeals must be completed. (See Article 44(b) and paragraph 68*d*). The following do not constitute direct review or appeal under this paragraph and do not affect the admissibility of a court-martial conviction under this paragraph: a pending collateral attack on a conviction in a federal court; a pending extraordinary writ to a Court of Military Review or to the Court of Military Appeals; a request to the Judge Advocate General to vacate or modify the findings or sentence of a court-martial under Article 69 "on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused"; or a pending petition to the Judge Advocate General under Article 73. Before a civilian conviction is admissible under this paragraph, it must be considered a final conviction under the laws of the jurisdiction in which it occurred; unless specifically provided otherwise by such laws, the conviction will be considered final upon completion of all direct appeals. For example, pending collateral attack or an extraordinary writ does not affect the admissibility of a civilian conviction under this paragraph unless the laws of the jurisdiction in which the conviction occurred specifically provide that the conviction is not final under such circumstances.

"(c) *Method of proof.* Previous convictions may be proven by any evidence admissible under the Military Rules of Evidence. Normally, previous convic-

tions may be proven by use of the personnel records of the accused, by the record of the conviction, or by the order promulgating the result of trial.

"(4) *Evidence in aggravation.* If a finding of guilty of an offense is based on a plea of guilty and available evidence as to any aggravating circumstances relating to the offenses of which the accused has been found guilty was not introduced before findings, the prosecution may introduce such evidence after the findings are announced. A written or oral deposition taken in accordance with paragraph 117 is admissible for purposes of evidence in aggravation, subject to Article 49.

"(5) *Access of the defense to information to be presented by the trial counsel.* The defense has the right upon request to receive prior to arraignment copies of such written material as will be presented by the prosecution on sentencing, along with a list of prosecution witnesses, if any. In the event that requested material is not provided, the defense shall have the right when such material is introduced on sentencing to obtain a recess or continuance to inspect and reply to the material.

"*c. Matter to be presented by the defense.* (1) *In general.* The defense may present matters in rebuttal of any material presented by the prosecution and may present matters in extenuation and mitigation regardless of whether the defense offered evidence before findings.

"(a) *Matter in extenuation.* Matter in extenuation of an offense serves to explain the circumstances surrounding the commission of an offense, including those reasons for committing the offense which do not constitute a legal justification or excuse.

"(b) *Matter in mitigation.* Matter in mitigation of an offense is introduced to lessen the punishment to be adjudged by the court, or to furnish grounds for a recommendation of clemency. It includes the fact that nonjudicial punishment under Article 15 has been imposed for an offense growing out of the same act or omission that constitutes the offense of which the accused has been found guilty (see paragraph 68*g*), particular acts of good conduct or bravery, and evidence of the reputation or record of the accused in the service for efficiency, fidelity, subordination, temperance, courage, or any other trait that is desirable in a good servicemember. The accused may thus, for example, introduce evidence of the character of former military service in the form of former discharges from military service.

"(2) *Statement by the accused.* (a) *Generally.* The accused may testify, make an unsworn statement, or both in extenuation, in mitigation, or to rebut matters presented by the prosecution, or for all three purposes whether or not the accused testified prior to findings. Such statement may be limited to any one or more of the specifications of which the accused has been found guilty. This provision does not permit the filing of an affidavit of the accused.

"(b) *Testimony of the accused.* The accused may give sworn oral testimony under this paragraph and shall be subject to cross-examination concerning it by the trial counsel or examination on it by the court, or both.

"(c) *Unsworn statement.* The accused may make an unsworn statement under this paragraph and may not be cross-examined by the trial counsel upon it or examined upon it by the court. The prosecution may, however, rebut any statements of facts therein. The unsworn statement may be oral or written and may be made by the accused, by counsel, or both. An unsworn statement ordinarily should not include what is properly argument, but inclusion of such matter by the accused when personally making an oral statement normally should not be grounds for stopping the statement.

"(3) *Rules of evidence relaxed.* The military judge or president of a special court-martial without a military judge may, with respect to matters in extenuation or mitigation or both, relax the rules of evidence. This may include receiving letters, affidavits, certificates of military and civil officers, and other writings of similar authenticity and reliability.

"*d. Rebuttal and surrebuttal.* The prosecution may present evidence to rebut evidence presented by the defense. The defense in surrebuttal may then rebut any rebuttal evidence offered by the prosecution. Rebuttal and surrebuttal may continue, subject to the discretion of the military judge or president of a special court-martial without a military judge (see for example, Military Rule of Evidence 403), as appropriate. The Military Rules of Evidence may be relaxed during rebuttal and surrebuttal to the same degree as in paragraph 75*c*(3).

"*e. Production of witnesses.* (1) *In general.* The requirement for the personal appearance testimony in the presentencing proceeding differs substantially from that when the testimony of a witness if offered on the merits. During the presentence proceedings, there is much greater latitude to receive information by means other than testimony presented through the personal appearance of witnesses. See paragraph 115 for determination of availability of witnesses prior to trial. The determination at trial as to whether a witness shall be produced to testify during presentence proceedings is a matter within the sound discretion of the military judge or the president of a special court-martial without a military judge, subject to the limitations in paragraph 75*e*(2).

"(2) *Limitations.* A witness may be produced to testify during presentence proceedings through a subpoena or travel orders at Government expense only if—

"(a) The testimony expected to be offered by the witness is necessary for consideration of a matter of substantial significance to a determination of an appropriate sentence, including evidence necessary to resolve an alleged inaccuracy or dispute as to a material fact;

"(b) The weight or credibility of the testimony is of substantial significance to the determination of an appropriate sentence;

"(c) The other party is unwilling to stipulate to the facts to which the witness is expected to testify, except in an extraordinary case when such a stipulation would be an insufficient substitute for the testimony;

"(d) Other forms of evidence, such as oral depositions, written interrogatories, or former testimony would not be sufficient to meet the needs of the court-martial in the determination of an appropriate sentence; and

"(e) The significance of the personal appearance of the witness to the determination of an appropriate sentence, when balanced against the practical difficulties of producing the witness, favors production of the witness. Factors to be considered in relation to the balancing test provided in paragraph 75*e*(2)(e) include, but are not limited to, the costs of producing the witness, the timing of the request for production of the witness, the potential delay in the presentencing proceeding that may be caused by the production of the witness, or the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

"*f. Argument.* After introduction of matters relating to sentence under this paragraph, counsel for the prosecution and defense may make arguments for an appropriate sentence. Trial counsel may not in argument purport to speak for the convening authority or any higher authority, refer to the views of such authorities or any policy directive relative to punishment, or to any punishment or quantum of punishment in excess of that which can be lawfully imposed in the particular case by that particular court. Trial counsel may, however, recommend a specific lawful sentence and may also refer to any generally accepted sentencing philosophy, to include rehabilitation of the accused, general deterrence, specific deterrence of misconduct by the accused, and social retribution.".

Sec. 3. The fourth paragraph of paragraph 115 of the said Manual for Courts-Martial is amended as follows:

a. Insert the following after the second sentence: "With respect to a witness for the prosecution on the issue of sentencing, he will not take such action

unless further satisfied that it will not cause a subpoena or travel orders at Government expense to be issued, except as authorized in paragraph 75*e*.".

b. Strike out the fourth sentence and insert the following in place thereof: "A request for the personal appearance of a witness will be submitted in writing, together with a statement signed by counsel requesting the witness. A request for a witness on the merits shall contain (1) a synopsis of the testimony that it is expected the witness will give, (2) full reasons that necessitate the personal appearance of the witness, and (3) any other matter showing that the expected testimony is necessary to the ends of justice. A request for a witness in a presentencing proceeding shall contain (1) a synopsis of the testimony that it is expected the witness will give and (2) the reasons why the personal appearance of the witness is necessary under the standards set forth on paragraph 75*e*.".

c. Strike out the words "the request" in the fifth sentence and insert the following in place thereof: "a request for a witness on the merits".

d. Insert the following after the fifth sentence: "The decision on a request for a witness in a presentencing proceeding shall be made under the standards set forth in paragraph 75*e*.".

Sec. 4. The second sentence of paragraph 117*b*(2) of the said Manual for Courts-Martial is amended as follows:

a. Insert "(a)" after "unless"; and

b. Strike out the period at the end of the sentence and insert the following: "; (b) the accused consents to appointment of assistant counsel at the site of the deposition; or (c) the deposition is ordered in lieu of production of a witness on the issue of sentencing under paragraph 75*e* and the authority ordering the deposition determines that the interests of the parties and the court-martial can be served adequately by (1) an oral deposition without the presence of the accused or (2) a written deposition without the presence of the accused or counsel at the site of the deposition.".

Sec. 5. Rule 1101(c) of Chapter 27 of the said Manual for Courts-Martial is amended by striking out "75*c*" and inserting "75*b*(4), 75*c*(3), 75*d*," in place thereof.

Sec. 6. These amendments shall take effect on August 1, 1981. These amendments apply to all court-martial processes taken on or after that date: Provided, that nothing contained in these amendments shall be construed to invalidate any investigation, trial in which arraignment has been completed, or other action begun prior to that date; and any such investigation, trial, or other action may be completed in accordance with applicable laws, Executive Orders, and regulations in the same manner and with the same effect as if these amendments had not been prescribed.

Sec. 7. The Secretary of Defense, on behalf of the President, shall transmit a copy of this Order to the Congress of the United States in accord with Section 836 of Title 10 of the United States Code.

Ronald Reagan

THE WHITE HOUSE,
July 29, 1981.

[FR Doc. 81-22517
Filed 7-29-81: 4:13 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 46, No. 147
Friday, July 31, 1981

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.

GENERAL ACCOUNTING OFFICE

DEPARTMENT OF JUSTICE

4 CFR Part 102

Collecting Debts by Offset

AGENCIES: General Accounting Office—Department of Justice.

ACTION: Final rule.

SUMMARY: This rule requires that agencies, in accordance with implementing regulations, extend to debtors an opportunity for a pre-offset oral hearing when a question of indebtedness cannot be resolved by review of documentary evidence and issues of credibility or veracity exist. Recent court decisions have emphasized the need for the Government to provide due process protections to debtors before collecting an alleged debt by offset. Granting an opportunity for a pre-offset oral hearing in appropriate cases conforms with due process requirements and will minimize the risk that the Government will collect invalid debts by involuntary offset.

EFFECTIVE DATE: July 31, 1981.

FOR FURTHER INFORMATION CONTACT: Chris Farley, Jr., U.S. General Accounting Office, Accounting and Financial Management Division, Claims Group, Room 5860, 441 G Street, NW., Washington, D.C. 20548, (202) 275–6088.

SUPPLEMENTARY INFORMATION: On April 29, 1981, the General Accounting Office and the Department of Justice published a proposed rule (46 FR 23939) to amend the present section in the Federal Claims Collection Standards dealing with collecting debts by offset (4 CFR 102.3). As was stated at that time, recent court decisions have emphasized the need for the Government to assure that claimant agencies provide due process protection to debtors prior to initiating offset actions.

In response to a number of comments and inquiries received during the comment period, we have amended the proposed rule.

In the supplementary information describing the proposed rule, we pointed out that for debt collection programs in which issues of credibility or veracity rarely arise, it will not be necessary to sift through all requests for reconsideration and grant a hearing to the few that involve credibility or veracity. We also pointed out that the regulation was not intended to eliminate agency discretion to exempt such collection programs from the requirements of the amendment. This conclusion was based on a Supreme Court decision, *Califano* v. *Yamasaki*, 442 U.S. 682 (1979). In this regard, one commenter pointed out that the proposed rule could be interpreted to require notice under paragraph 102.3(c) even in those instances in which a pre-offset oral hearing is not required because the debt collection systems concerned only rarely involves issues of credibility or veracity. Accordingly, paragraph (c) has been revised so that the notice provisions would not apply to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity.

Another commenter suggested that paragraph (b)(1) be revised to explicitly indicate that an opportunity for an oral hearing is required in waiver cases only where the agency does not accept the factual contentions of the debtor. The commenter pointed out that his agency rarely disputes the debtor's factual allegations, but rather bases a waiver determination on whether the debtor reasonably should have been aware that the payment was erroneous. We agree that waiver cases decided upon such a standard of reasonableness rarely involve issues of credibility or veracity and therefore do not require a pre-offset oral hearing. However, in view of the Government-wide applicability of the regulation, we are hesitant to include in the actual regulation a spcific example of when issues of credibility or veracity do or do not arise. This question can be best addressed by agencies in consideration of their unique collection and waiver systems and explicitly stated in implementing regulations.

Another commenter was concerned with the circumstances under which oral hearings would be required and with the timing of such hearings. The same commenter also addressed several technical issues such as whether foreign nationals would be covered by the amendment and whether late payment fees or interest charges should be assessed pending an oral hearing. Again these questions can be best addressed by an agency in implementing regulations, and by consulting other pertinent authorities, such as the Treasury Department's Fiscal Requirements Manual with respect to charging interest. The General Accounting Office will provide advice to individual agencies upon request.

This amendment is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981.

Accordingly, 4 CFR 102.3 is revised to read as follows:

§ 102.3 Collection by offset.

(a) Collections by offset will be undertaken administratively in accordance with these standards and implementing regulations established by the head of each agency on claims which are liquidated or certain in amount in every instance in which this is feasible. Collections by offset from persons receiving pay or compensation from the Federal Government shall be effected over a period not greater than the period during which such pay or compensation is to be received. See 5 U.S.C 5514.

(b) When the head of an agency, or his designee, pursuant to 5 U.S.C. 5514, 5522, 5705, 5724(f), or other statutory authority, seeks to collect a debt by offset against accrued pay, compensation, accrued benefits derived from Federal service or amount of retirement credit due to a present or former Government employee, a member of the armed forces, a Reserve of the armed forces, or a present or former employee of the U.S. Postal Service, the agency to which the debt allegedly is owed will accord such debtor an opportunity for a pre-offset oral hearing when (1) the debtor requests waiver of the indebtedness and the waiver determination turns on an issue of credibility or veracity or (2)

when the individual requests reconsideration of the debt and the head of the agency or his designee determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity: *Provided that*, where the employment or active duty status of a debtor entitled to a hearing under paragraph b(1) or (2) of this section terminates, and the creditor agency determines that (i) amounts accruing to the debtor upon such termination are available for offset in satisfaction of the alleged indebtedness, (ii) such amounts would not be available for offset subsequent to termination and (iii) the time prior to termination does not permit a pre-offset hearing, the agency may withhold from amounts accruing to the individual upon termination, a sum not greater than that of the alleged indebtedness and, subsequent to termination, promptly provide an opportunity for an oral hearing to resolve the issue of indebtedness or waiver. Amounts withheld but later determined not owing to the Government shall be promptly refunded.

(c) Except for debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity, or when employment or military status is about to terminate as described in the proviso of paragraph (b) of this section, prior to collecting any indebtedness by offset the head of the agency to which the debt allegedly is owed or his designee shall provide the debtor a written demand containing the notices prescribed in § 102.2 above and include therein: (1) notice of the agency's intention to collect by offset; (2) an opportunity to request reconsideration of the debt, or if provided for by statute, waiver of the debt, and (3) an explanation of the debtor's rights pursuant to this section.

(d) Collection by offset against a judgment obtained by the debtor against the United States shall be accomplished in accordance with the Act of March 3, 1875, 18 Stat. 481, as amended, 31 U.S.C. 227.

(e) Appropriate use should be made of the cooperative efforts of other agencies in effecting collections by offset, including utilization of the Army Holdup List, and all agencies are enjoined to cooperate in this endeavor.

(Sec. 3, 80 Stat. 309; 31 U.S.C. 952)

Dated: July 29, 1981.

William French Smith,

Attorney General of the United States.

Dated: July 27, 1981.

Milton J. Socolar,

Acting Comptroller General of the United States.

[FR Doc. 81-22502 Filed 7-30-81; 8:45 am]

BILLING CODE 1610-01-M

BILLING CODE 4410-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 316; Lemon Regulation 315, Amdt. 1]

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 August 2–8, 1981, and increases the quantity of lemons that may be shipped during the period July 26–August 1, 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 August 2, 1981, and the amendment is effective for the period July 26–August 1, 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 28, 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 is easier, but still considered 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 910.616 is added as follows:

§ 910.616 Lemon Regulation 316.

The quantity of lemons grown in California and Arizona which may be handled during the period August 2, 1981, through August 8, 1981, is established at 273,328 cartons.

2. Section 910.615 Lemon Regulation 315 (46 FR 38068) is revised to read 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 315,700 cartons.

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

Dated: July 29, 1981

D. S. Kuryloski,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 81-22498 Filed 7-30-81; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 919

[Peach Regulation 21]

Peaches Grown in Mesa County, Colorado; Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule sets minimum grade and size requirements for shipments of fresh Colorado peaches beginning August 1, 1981, through October 15, 1981. Such action is necessary to promote orderly marketing of suitable quality and sizes of fresh Colorado peaches in the interest of producers and consumers.

DATES: Interim rule effective August 1, 1981, through October 15, 1981; comments which are received by August 31, 1981, will be considered prior to issuance of a final rule to become effective on October 16, 1981, and continue in effect until modified, suspended or terminated.

ADDRESS: Send two copies of comments to the Hearing Clerk, United States Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" 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 not measurably affect costs for the directly regulated handlers.

This rule is issued under the marketing agreement, as amended, and Order No. 919, as amended (7 CFR Part 919), regulating the handling of fresh peaches grown in Mesa County, Colorado. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendations and information submitted by the administrative committee established under the order and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The committee estimates 1981 fresh shipments from the production area at 140,000 bushels (48-pound equivalent), up slightly from the approximately 133,000 bushels shipped fresh from Mesa County in 1980. Freestone peach production for the entire State of Colorado is estimated by the Crop Reporting Board at 20.0 million pounds (417,000 bushels), 11 percent greater than the 18.0 million pounds produced in 1980. Freestone peach production in California and South Carolina, the two leading States, is expected to reach a new record this season. However, total U.S. freestone peach production nationally in 1981 is expected to be 1 percent less than in 1980. This season's crop is described as being in very good condition.

Specification of a minimum grade of U.S. No. 1 and minimum diameter of 2⅛ inches is necessary to maintain orderly marketing conditions by peventing the shipment of poor quality peaches. Shipment of such low quality fruit would disrupt orderly marketing and tend to depress prices of all peaches, since low quality fruit undermines consumer confidence in the quality of all peaches sold in the market and discourages repeat purchases. The specified grade and size requirements are consistent with the quality and size composition of the available crop.

It is proposed that the regulations contained in the interim rule, effective for the period August 1, 1981, through October 15, 1981, would continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary. Interested persons are invited to comment through August 31, 1981, with regard to the interim rule and proposed final regulation. Heretofore, regulations issued under the marketing order were made effective for a single marketing season. The proposed change to issue regulations which would continue in effect from marketing season to marketing season reflects the fact that regulations change infrequently from season to season and it is believed unnecessary to issue them for only a single season. In addition, the proposed action could result in a reduction in operational costs to the committee and the government. Although the final regulation would be effective for an indefinite period, the committee would continue to meet prior to and during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee would submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate committee recommendations and information submitted by the committee, and other available information, and determine whether modification, suspension, or termination of the regulations on shipments of Colorado peaches would tend to effectuate the declared policy of the act.

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 of the interim rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and good cause exists for making these regulatory provisions effective as specified in that (1) shipment of the current crop of peaches is expected to begin on or before August 1, 1981; (2) the Colorado peach regulation was recommended by the committee following discussion at a public meeting; and (3) Colorado peach handlers have been apprised of these requirements for Colorado peaches and the effective date.

Information collection requirements (reporting or 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.

Therefore, a new § 919.322 is added to read as follows:

§ 919.322 Peach Regulation 21.

(a) During the period August 1, 1981, through October 15, 1981, no handler shall ship:

(1) Any peaches of any variety which do not grade at least U.S. No. 1;

(2) Any peaches of any variety which are of a size smaller than 2⅛ inches in diameter: *Provided*, That any lot of peaches shall be deemed to be of a size not smaller than 2⅛ inches in diameter if (i) not more than 10 percent, by count, of such peaches in such lot are smaller than 2⅛ inches in diameter, and (ii) not more than 15 percent, by count, of the

peaches contained in any individual container in such lot are smaller than 2⅛ inches in diameter.

(b) The terms "U.S. No. 1", "diameter", and "count" mean the same as defined in the United States Standards for Peaches (7 U.S.C. 2851.1210–2851.1223).

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

Dated: July 28, 1981, to become effective August 1, 1981.

D. S. Kuryloski,

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

[FR Doc. 81-22460 Filed 7-30-81; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 946

Irish Potatoes Grown in Washington; Handling Regulation

AGENCY: Agriculture Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This continuing regulation requires fresh market shipments of potatoes grown in Washington to be inspected and meet minimum grade, size, maturity and pack requirements. The regulation should promote orderly marketing of such potatoes and keep less desirable quality and sizes from being shipped to consumers.

EFFECTIVE DATE: August 1, 1981.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447–2615. Copies of the Marketing Policy and the Department's impact analysis will be available from him.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been classified "not significant" and "non-major."

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 not measurably affect costs for the directly regulated handlers.

Marketing Agreement No. 113 and Order No. 946, both as amended, regulate the handling of Irish potatoes grown in the State of Washington. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The State of Washington Potato Committee, established under the order, is responsible for its local administration.

This regulation is based upon the recommendations made by the committee at its public meeting in Moses Lake, Washington, on June 5, 1981.

The recommendations of the committee reflect its appraisal of the composition of the 1981 crop of Washington potatoes and the marketing prospects for this season. Shipments have already begun this season. The grade, size, cleanness, maturity and pack requirements, which are similar to those currently in effect through July 31, 1981, will prevent potatoes of lesser maturities, low quality, or undesirable sizes from being distrubuted in fresh market channels. They will also provide consumers with good quality potatoes consistent with the overall quality of the crop.

All long varieties will be required to be at least 2⅛ inches minimum diameter or 5 ounces minimum weight during the period August 1 through August 31 this year and July 15 through August 31 each year thereafter. The committee believes this minimum diameter size should provide a more desirable potato pack to consumers. During the period September 1 through July 14 each year all long varieties will be required to be at least 2 inches in diameter or 4 ounces in weight. These requirements are similar to those of last year, and should provide an adequate supply of potatoes at reasonable prices to consumers.

The committee recommended retaining the additional 10 percent tolerance for damage due to internal defects for potatoes packed in 50-pound cartons. This problem usually occurs in the larger size potatoes—the predominant ones packed in cartons. Without this tolerance these larger potatoes would have to be shipped in bags which provide less protection to the potatoes and less ease of handling.

Exceptions are made to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonalble.

Shipments will be allowed to certain special purpose outlets without regard to minimum grade, size, cleanness, maturity and pack requirements provided that safeguards are used to prevent such potatoes from reaching unauthorized outlets. Seed will be exempted because requirements for this outlet differ greatly from those for fresh market. Shipments for use as livestock feed will likewise be exempt. Potatoes grown in the production area may be shipped without regard to the aforesaid requirements to specified locations in Morrow and Umatilla Counties, Oregon, in District No. 5, and Spokane County in District No. 1 for grading and storing. Since no purpose would be served by regulating potatoes used for charity purposes, such shipments will be exempt. Exemption of potatoes for most processing uses is mandatory under the legislative authority for this part. Therefore, shipments to processing outlets are exempt.

Again the minumum quantity exemption will be 20 hundredweight. This should relieve the burden on handling noncommercial quantities of potatoes and allow direct marketing outlets to operate in greater freedom.

Requirements for export shipments differ from those for domestic markets. Quality requirements may differ in foreign markets and smaller sizes are more acceptable. Because of this, export shipments will be exempt. In commercial prepeeling, operators remove the surface defects from potatoes which would be undesirable for the tablestock market, and smaller sizes are acceptable. For these reasons potatoes for prepeeling will also be exempt.

These requirements will continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary. Heretofore, regulations issued under the marketing order were made effective for a single marketing season. The change to issue regulations which will continue in effect from marketing season to marketing season reflects the fact that regulations change infrequently from season to season and it is believed unnecessary to issue them for only a single season. In addition, this action could result in a reduction in operational costs to the committee and the government. Although the final regulation would be effective for an indefinite period, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee will submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Hearing Clerk, Room 1077–S, U.S. Department of Agriculture, Washington, D.C. 20250, before June 1 each year. The Department will evaluate committee

recommendations and information submitted by the committee, and other available information, and determine whether modification, suspension, or termination of the regulations on shipments of Washington potatoes would tend to effectuate the declared policy of the act.

Findings. After consideration of all relevant matters, including the proposal in the notice, it is found that the following handling regulation will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective date of this regulation until 30 days after its publication in the **Federal Register** (5 U.S.C. 553) in that (1) shipments of potatoes grown in the production area have already begun, (2) to maximize benefits to producers this regulation should apply to as many shipments as possible during the marketing season, (3) notice was given in the July 13, 1981, **Federal Register** (46 FR 35924) allowing interested persons until July 28, 1981, in which to file written comments and none was received, and (4) compliance with this regulation, which is similar to regulations issued during previous seasons, requires no special preparation by handlers subject to it which cannot be completed by the August 1, 1981, regulation effective date.

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.

Section 946.335 (45 FR 42590, 47653 and 58098, June 25, July 16, and September 2, 1980) is hereby removed and a new § 946.336 is added as follows:

§ 946.336 Handling regulation.

On and after August 1, 1981, no person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c), and (g) of this section or unless such potatoes are handled in accordance with paragraphs (d) and (e) or (f) of this section.

(a) *Minimum quality requirements.*

(1) *Grade: All varieties*—U.S. No. 2, or better grade.

(2) *Size:* (i) *Round varieties*—1⅞ inches (47.6 mm) minimum diameter.

(ii) *Long varieties*—All long varieties must be 2⅛ inches (54.0 mm) minimum diameter or 5 ounces minimum weight during July 15 through August 31 each season, and 2 inches (50.8 mm) or 4 ounces during the remainder of each season.

(3) *Cleanness:* All varieties and grades—as required in the United States Standards for Grades of Potatoes. For example: U.S. No. 2—"not seriously damaged by dirt," and U.S. No. 1—"fairly clean."

(b) *Minimum maturity requirements.* (1) *Round and White Rose varieties:* Not more than "moderately skinned."

(2) *Other long varieties (including but not limited to Russet Burbank and Norgold):* Not more than "slightly skinned."

(c) *Pack.* Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better, except that potatoes which fail to meet the U.S. No. 1 grade only because of internal defects may be shipped provided the lot contains not more than 10 percent damage by any internal defect or combination of internal defects but not more than 5 percent serious damage by any internal defect or combination of internal defects.

(d) *Special purpose shipments.* The minimum grade, size, cleanness, maturity, and pack requirements set forth in paragraphs (a), (b), and (c) of this section shall not be applicable to shipments of potatoes for any of the following purposes:

(1) Livestock feed;

(2) Charity;

(3) Seed;

(4) Prepeeling;

(5) Canning, freezing, and "other processing" as hereinafter defined; or

(6) Grading or storing at any specific location in Morrow and Umatilla Counties in the State of Oregon, in District 5, or in Spokane County in District 1;

(7) Export, except to Alaska or Hawaii.

Shipments of potatoes for the purpose specified in subparagraphs (1) through (7) of this paragraph shall be exempt from inspection requirements specified in paragraph (g) of this section except shipments pursuant to subparagraph (6) shall comply with inspection requirements of (e)(2) of this section. Shipments specified in (1), (2), (3), and (5) shall be exempt from assessment requirements specified in § 946.41.

(e) *Safeguards.* (1) Handlers desiring to make shipments of potatoes for prepeeling shall:

(i) Notify the committee of intent to ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipments;

(ii) Prepare on forms furnished by the committee a special purpose shipment report on each such shipment. The handler shall forward copies of each such special purpose shipment report to the committee office and to the receiver with instructions to the receiver to sign and return a copy to the committee office. Failure of the handler or receiver to report such shipments by promptly signing and returning the applicable special purpose shipment report to the committee office shall be cause for cancellation of such handler's certificate applicable to such special purpose shipments and/or the receiver's eligibility to receive further shipments pursuant to such certificate. Upon cancellation of such certificate, the handler may appeal to the committee for reconsideration; such appeal shall be in writing.

(iii) Before diverting any such special purpose shipment from the receiver of record as previously furnished to the committee by the handler such handler shall submit to the committee a revised special purpose shipment report.

(2) Handlers desiring to make shipments for grading or storing at any specified location in Morrow and Umatilla Counties in the State of Oregon, in District No. 5, or in Spokane County in District No. 1 shall:

(i) Notify the committee of intent to so ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipment. Upon receiving such application, the committee shall supply to the handler the appropriate certificate after it has determined that adequate facilities exist to accommodate such shipments and that such potatoes will be used only for authorized purposes;

(ii) If reshipment is for any purpose other than as specified in paragraph (d) of this section, each handler desiring to make reshipment of potatoes which have been graded or stored shall, prior to reshipment, cause each such shipment to be inspected by an authorized representative of the Federal-State Inspection Service. Such shipments must comply with the minimum grade, size, cleanness, maturity, and pack requirements specified in paragraphs (a), (b) and (c) of this section;

(iii) If reshipment is for any of the purposes specified in paragraph (d) of this section, each handler making reshipment of potatoes which have been graded or stored shall do so in accordance with the applicable safeguard requirements specified in paragraph (e) of this section.

(3) Each handler making shipments of potatoes for canning, freezing, or "other processing" pursuant to paragraph (d) of this section shall:

(i) First apply to the committee for and obtain a Certificate of Privilege to make shipments for processing;

(ii) Make shipments only to those firms whose names appear on the committee's list of canners, freezers, or other processors of potato products maintained by the committee, or to persons not on the list provided the handler furnishes the committee, prior to such shipment, evidence that the receiver may reasonably be expected to use the potatoes only for canning, freezing, or other processing;

(iii) Upon request by the committee, furnish reports of each shipment pursuant to the applicable Certificate of Privilege;

(iv) Mail to the office of the committee a copy of the bill of lading for each Certificate of Privilege shipment promptly after the date of shipment;

(v) Bill each shipment directly to the applicable processor.

(4) Each receiver of potatoes for processing pursuant to paragraph (d) of this section shall:

(i) Complete and return an application form for consideration of approval as a canner, freezer, or other processor of potato products;

(ii) Certify to the committee and to the Secretary that potatoes received from the production area for processing will be used for such purpose and will not be placed in fresh market channels;

(iii) Report on shipments received as the committee may require and the Secretary approve.

(5) Each handler desiring to make shipments of potatoes for export shall:

(i) Notify the committee of intent to so ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipment. Such information shall include the quantity of potatoes to be shipped and the name and address of the exporter;

(ii) After the certificate is approved and the shipment is made, furnish the committee with a copy of the on-board bill of lading applicable to such shipment;

(iii) Before diverting any such special purpose shipment from the receiver of record as previously furnished to the committee by the handler such handler shall submit to the committee a revised special purpose shipment report.

(f) *Minimum quantity exemption.* Each handler may ship up to, but not to exceed 20 hundredweight of potatoes to any person without regard to the inspection and assessment requirements of this part, but this exemption shall not apply to any shipment over 20 hundredweight of potatoes.

(g) *Inspection.* Except when relieved by paragraphs (d) or (f) of this section, no person may handle any potatoes unless an appropriate inspection certificate covering them has been issued by an authorized representative of the Federal-State Inspection Service and the certificate is valid at the time of shipment.

(h) *Definitions.* The terms "U.S. No. 1," "U.S. No. 2," "not seriously damaged by dirt," "fairly clean," "slightly skinned" and "moderately skinned" shall have the same meaning as when used in the United States Standards for Grades of Potatoes (7 CFR 2851.1540–2851.1566), including the tolerances set forth in it. The term "prepeeling" means the commercial preparation in the prepeeling plant of clean, sound, fresh tubers by washing, peeling or otherwise removing the outer skin, trimming, sorting and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 2852.2422 United States Standards for Grades of Peeled Potatoes (7 CFR 2852.2421–2852.2433). The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch and flour. It includes the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing." Other terms used in this section have the same meaning as when used in the marketing agreement, as amended, and this part.

(i) *Applicability to imports.* Pursuant to section 8e of the act and § 980.1 "Import regulations" (7 CFR 980.1), Irish potatoes of the red skinned round type imported during the months of July and August each year shall meet the minimum grade, size, quality and maturity requirements for round varieties specified in paragraphs (a) and (b) of this section.

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

Dated July 29, 1981 to become effective August 1, 1981.

D. S. Kuryloski,

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

[FR Doc. 81-22409 Filed 7-30-81; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 948

Irish Potatoes Grown in Colorado—Area No. 3; Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation requires fresh market shipments of potatoes grown in Colorado—Area No. 3 to be inspected and meet minimum grade, size and maturity requirements. The regulation should promote orderly marketing of such potatoes and keep less desirable qualities and sizes from being shipped to consumers.

EFFECTIVE DATE: July 31, 1981.

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

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures and Executive Order 12291 and has been classified "not significant" and not a major 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 not measurably affect costs for the directly regulated handlers.

Marketing Agreement No. 97 and Order No. 948, both as amended, regulate the handling of potatoes grown in designated counties of Colorado Area No. 3. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Colorado Area No. 3 Potato Committee, established under the order, is responsible for its local administration.

Notice of proposed rulemaking was published in the June 19, 1981, **Federal Register** (46 FR 32031) inviting comments by July 20, 1981. None was received.

This regulation is based upon recommendations made by the committee at its public meeting in Greeley, Colorado, on May 27, 1981.

The grade, size, maturity and inspection requirements specified herein are similar to those issued during the previous season. They are necessary to prevent potatoes of low quality or less desirable sizes from being distributed to fresh market outlets. They will benefit consumers and producers by standardizing and improving the quality of the potatoes shipped from the production area.

Exceptions are provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable.

Shipments are permitted to certain special purpose outlets without regard

to the grade, size, maturity and inspection requirements, provided that safeguards are met to prevent such potatoes from reaching unauthorized outlets. Certified seed is exempt because requirements for this outlet differ greatly from those for fresh market. Shipments for use as livestock feed likewise are exempt. Since no purpose would be served by regulating potatoes used for charity purposes, such shipments are likewise exempt.

Also potatoes for most processing uses are exempt under the legislative authority for this part.

Potatoes for prepeeling may be handled without regard to maturity requirements since skinning of such potatoes is of no consequence. Also, the maturity requirements terminate on December 31, 1981, because at that stage of the marketing season potatoes are generally mature with skins firmly set.

Findings. After consideration of all relevant matter presented, including the proposal set forth in the aforesaid notice which was recommended by the Colorado Area No. 3 Potato Committee, established pursuant to said marketing agreement and order, it is hereby found that the handling regulation, as hereinafter set forth, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after its publication in the **Federal Register** (5 U.S.C. 553) in that (1) shipments of potatoes grown in the production area will begin on or about the effective date specified herein, (2) to maximize benefits to producers, this regulation should apply to as many shipments as possible during the marketing season, and (3) compliance with this regulation, which is similar to that in effect during previous marketing seasons, will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective date hereof.

PART 948—IRISH POTATOES GROWN IN COLORADO

Section 948.383 (45 FR 51182, August 1, 1980) is hereby removed and a new § 948.385 is added as follows:

§ 948.385 Handling regulation.

Beginning the effective period hereof through July 31, 1982, no person shall handle any lot of potatoes grown in Area No. 3 unless such potatoes meet the requirements of paragraphs (a), (b) and (c) of this section, or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section.

(a) *Grade and size requirements—All Varieties.* U.S. No. 2 or better grade, 1⅞ inches minimum diameter or 4 ounces minimum weight. However, Size B may be handled if U.S. No. 1 grade.

(b) *Maturity (skinning) requirements—All varieties.* Through December 31, 1981, for U.S. No. 2 grade, not more than "moderately skinned," and for all other grades, not more than "slightly skinned"; thereafter no maturity requirements.

(c) *Inspection.* (1) No handler shall handle any potatoes for which inspection is required unless an appropriate inspection certificate has been issued with respect thereto and the certificate is valid at the time of shipment. For purpose of operation under this part it is hereby determined pursuant to paragraph (d) of § 948.40, that each inspection certificate shall be valid for a period not to exceed five days following the date of inspection as shown on the inspection certificate.

(2) No handler may transport or cause the transportation by motor vehicle of any shipment of potatoes for which an inspection certificate is required unless each shipment is accompanied by a copy of the inspection certificate applicable thereto and the copy is made available for examination at any time upon request.

(d) *Special purpose shipments.* (1) The grade, size, maturity and inspection requirements of paragraphs (a), (b), and (c) of this section shall not be applicable to shipments of potatoes for:

(i) Livestock feed;

(ii) Charity;

(iii) Canning, freezing, and "other processing" as hereinafter defined; and

(iv) Certified seed potatoes (§ 948.6).

(2) The maturity requirements set forth in paragraph (b) of this section shall not be applicable to shipments of potatoes for prepeeling.

(e) *Safeguards.* Each handler making shipments of potatoes pursuant to paragraph (d) of this section shall:

(1) Prior to shipment, apply for and obtain a Certificate of Privilege from the committee;

(2) Furnish the committee such reports and documents as required, including certification by the buyer or receiver on the use of such potatoes; and

(3) Bill each shipment directly to the applicable buyer or receiver.

(f) *Minimum quantity.* For purposes of regulation under this part, each person may handle up to but not to exceed 1,000 pounds of potatoes per shipment without regard to the requirements of paragraphs (a) and (b) of this section, but this exception shall not apply to any shipment of over 1,000 pounds of potatoes.

(g) *Definitions.* The terms "U.S. No. 1," "U.S. No. 2," "Size B," "moderately skinned" and "slightly skinned" shall have the same meaning as when used in the United States Standards for Grades of Potatoes (7 CFR 2851.1540–2851.1566) including the tolerances set forth therein. The term "prepeeling" means the commercial preparation in a prepeeling plant of clean, sound, fresh potatoes by washing, peeling or otherwise removing the outer skin, trimming, sorting, and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 2852.2422 United States Standards for Grades of Peeled Potatoes (7 CFR 2852.2421–2852.2433). The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing." All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 97, as amended, and this part.

(h) *Applicability to imports.* Pursuant to section 8e of the act and § 980.1, "Import regulations" (7 CFR 980.1), round white varieties of Irish potatoes, except certified seed potatoes, imported into the United States beginning the effective period hereof through June 4, 1982, shall meet the minimum grade, size, quality, and maturity requirements specified in paragraphs (a) and (b) of this section.

(i) *Forms.* Information 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.

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

Dated: July 28, 1981 to become effective July 31, 1981.

D. S. Kuryloski,

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

[FR Doc. 81-22399 Filed 7-30-81; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Amendment of Various Subparts; Varietal Types of Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation classifies Dipped Seedless, and Oleate and Related Seedless, raisins as separate varietal types. Raisins are separated into varietal types to apply volume and quality regulations established under the order. This rule is based on a recommendation of the Raisin Administrative Committee. The Committee works with the USDA in administering the order.

EFFECTIVE DATE: July 31, 1981.

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 action has been reviewed under USDA guidelines implementing Executive Order No. 12291 and Secretary's Memorandum No. 1512–1 and has been determined to be a "non-major" 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 19 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.

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) because: (1) The 1981–82 crop year begins August 1 and this action should be effective by the time new crop deliveries from producers to handlers begin; (2) raisin varietal types are used in the application of quality and volume regulations under the order and this action should be effective soon so handlers can formulize their marketing plans for these types of raisins for the 1981–82 crop year; and (3) postponing the effective date of this action would serve no useful purpose and could cause administrative problems in the application of quality regulations and any volume regulations established for the 1981–82 crop year.

Notice of this action was published in the **Federal Register** on June 10, 1981 (46 FR 30645). In that notice, interested persons were given the opportunity to submit comments until June 30, 1981. Three comments were received. Two of the commentators agreed with the separation and stated it would make the application of volume regulations more equitable and isolate the production and marketing uncertainties of the oleate raisins from the more established water-dipped raisins. The third commentator recommended changes to make the proposal more specific and to bring the proposal in line with current procedures used in classifying raisins into varietal types. This comment is discussed later in more detail.

This action will be taken under § 989.10 of the Marketing Agreement and Order No. 989 (7 CFR 989), both as amended, regulating the handling of raisins produced from grapes grown in California (hereinafter 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). Section 989.10 lists seven types of raisins, and provides that the Committee may, subject to the approval of the Secretary, change this list.

The seven listed varietal types are set forth as categories in § 989.110 and the raisins included in each category are defined. One of these is Category (2), Dipped and Related Seedless. That category includes raisins commonly referred to in the industry as water-dipped, soda-dipped, and oleate raisins.

The segment of the raisin industry making water-dipped and soda-dipped raisins is relatively small and is reasonably capable of tailoring supplies of those raisins to market needs. There are approximately 30 dehydrators in the industry capable of making water-dipped and soda-dipped raisins.

Production of oleate raisins is an outgrowth of the production of natural (sun-dried) raisins. Oleate raisins are of relatively recent origin to the U.S. raisin industry and were developed in order to reduce the time required to sun-dry raisins and reduce any problems associated with untimely rains during drying. Each producer making sun-dried raisins also is a potential producer of oleate raisins. There are roughly 4,800 producers making sun-dried raisins. Their number can fluctuate from year to year depending upon several factors, the most important of which is the prospective price for raisins versus the price offered by wineries for raisin variety grapes. The large number of producers and the versatility of the Thompson Seedless grape make it virtually impossible to tailor production of these raisins to free tonnage needs.

Currently, if a producer sprays grapes to accelerate the rate of drying, the dried product would be classified as Dipped and Related Seedless raisins. If oleate production is minimal, there would be little effect on any volume control percentages established for Dipped and Related Seedless raisins. However, if production of oleate raisins in any one year is substantial, the reserve percentage for Dipped and Related Seedless raisins would be inflated and the water-dipped segment's portion of the free tonnage for that year would be reduced.

To provide equity between the sun-dried and arificially dehydrated raisin segments of the industry in volume regulation computations, water-dipped, soda-dipped, and oleate raisins will be classified on the basis of whether or not they are sun-dried or artificially dried. Therefore, Category (2), "Dipped and Related Seedless" will be changed to "Dipped Seedless" and would include all raisins produced by artificial dehydration of seedless grapes which have or have not been dipped in or sprayed with water, with or without soda, oil, ethyl oleate, methyl oleate, or any other chemical, after such grapes have been removed from the vine and which have not been sulfured prior to drying. Under the proposal this category did not include raisins from Category (1), Natural (sun-dried) Seedless, Category (3), Golden Seedless, and Category (8), Oleate and Related Seedless. The Committee's inspection service, which is responsible for classifying raisins into varietal types, recommended that Category (5), Sultana, Category (6), Zante Currant, and Category (7), Monukka also be excluded from Category (2). The inspection service indicated that raisins included in Categories (5), (6), and (7), normally are seedless, can be made using the same production processes as those used to produce the raisins proposed to be included in Category (2), and in some cases closely resemble Category (2) raisins. It, therefore, is recommended that the industry's desire to retain Categories (5), (6), and (7) as separate varietal types would be best accomplished by excluding these three types of raisins from Category (2). In view of the foregoing, this recommendation is adopted and Category (2) is revised accordingly.

Category (8), Oleate and Related Seedless will include all raisins produced by sun-drying of seedless grapes which have been dipped in or sprayed with water, with or without soda, oil, ethyl oleate, methyl oleate or any other chemicals, either while such grapes are on the vine or after they have been removed from the vine. Under the proposal, this category did not include raisins in Categories (1), (2), and (3). The inspection service suggested that the raisins included in Categories (5), (6), and (7) also be excluded from this category because they normally are seedless, can be made like Category (8) raisins, and in some cases closely resemble them. To retain Categories (5), (6), and (7) as separate varietal types, this recommendation also is adopted and appropriate changes are made in Category (2).

The inspection service also recommended a change in the proposed surveillance and identification requirements which were proposed in § 989.110(i). Under the proposal, water-dipped raisins produced without inspection surveillance would have been classified as Oleate and Related Seedless, even though the inspection service may have disagreed with that classification. This would have resulted in the inspection service certifying incorrectly the varietal type of raisins. It pointed out that under the proposed surveillance and identification requirements, the classification of water-dipped raisins could be manipulated by arranging for or not arranging for surveillance. This could create problems in applying volume regulations especially if the regulation would be more restrictive for one of these varietal types.

For these reasons, and to continue the flexibility the inspection needs in classifying raisins, the proposed surveillance and identification requirements are deleted from the final rule.

Under current inspection service classification procedures, the varietal type category is declared on the application for inspection. If the inspector disagrees with that declaration, the inspector informs the applicant and gives the applicant the opportunity to substantiate the stated declaration. If adequate proof is not presented to justify the applicant's declaration, the inspector classified the raisins, by type, on the basis of his judgment. If the applicant appeals this classification, the matter is referred to the Committee for resolution.

The change in the term "Dipped and Related Seedless" to "Dipped Seedless", and the addition of the new category, "Oleate and Related Seedless" necessitates some conforming changes in Subpart—Supplementary Regulations (7 CFR 989.202–989.233; 45 FR 75164), Subpart—Conversion Factors (7 CFR 989.601), and Subpart—Quality Control (7 CFR 989.701–989.703; 45 FR 65512), and these changes also are in this document.

After consideration of all relevant matter presented, including that in the notice, the comments submitted, the information and recommendation submitted by the Committee, and other available information, it is further found that the classification of Dipped Seedless, and Oleate and Related Seedless, raisins as separate varietal types in § 989.110 of Subpart—Administrative Rules and Regulations (7 CFR 989.102–989.176), and the necessary conforming changes in Subpart—Supplementary Regulations (7 CFR 989.202–989.233; 45 FR 75164), Subpart—Conversion Factors (7 CFR 989.601), and Subpart—Quality Control (7 CFR 989.701–989.703; 45 FR 65512), will tend to effectuate the declared policy of the act.

Therefore, the changes are made as follows:

PART 989 RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Subpart—Administrative Rules and Regulations

1. Section 989.110 of Subpart—Administrative Rules and Regulations (7 CFR 989.102–989.176) is amended by revising the Introductory paragraph, paragraph (b) and by adding a new paragraph (h) to read as follows:

§ 989.110 Changed list of varietal types.

Pursuant to § 989.10, the list of varietal types of raisins contained in that section is changed to include the category "Oleate and Related Seedless" and by specifying definitions for each varietal type category as follows:

* * * * *

(b) Category (2), Dipped Seedless includes all raisins, other than those in Categories (1), (3), (5), (6), (7), and (8), produced by artificial dehydration of seedless grapes which have or have not been dipped in or sprayed with water, with or without soda, oil, ethyl oleate, methyl oleate, or any other chemicals, after such grapes have been removed from the vine.

* * * * *

(h) Category (8), Oleate and Related Seedless includes all raisins, other than those in Categories (1), (2), (3), (5), (6), and (7) produced by sun-drying of seedless grapes which are dipped in or sprayed with water, with or without soda, oil, ethyl oleate, methyl oleate, or any other chemicals either while such grapes are on the vine or after they have been removed from the vine.

Subpart—Supplementary Regulations

§ 989.210 [Amended]

2. Section 980.210 of Subpart—Supplementary Regulations (7 CFR 989.210–989.233; 45 FR 75164) is amended by changing the term "Dipped and Related Seedless", to "Dipped Seedless, and Oleate and Related Seedless" whenever that term appears in that section.

Subpart—Conversion Factors

§ 989.601 [Amended]

3. The conversion factor table in § 989.601 is revised by changing the term "Dipped and Related Seedless" to "Dipped Seedless" and by adding the varietal type "Oleate and Related Seedless" to the list immediately after "Zante Currant". The conversion factors for "Oleate and Related Seedless" for weight computation "After Stemmer and Blower Processing", and after "Completion of Processing" shall be .94 and .92, respectively.

Subpart—Quality Control

§ 989.701–989.703 [Amended]

4. Section 989.701(b), 989.702, and 989.703 of Subpart—Quality Control (7 CFR 989.701–989.703; 45 FR 65512) is amended by changing the term "Dipped and Related Seedless" wherever that term appears in those sections, to "Dipped Seedless, and Oleate and Related Seedless."

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

Dated: July 28, 1981.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 81-22407 Filed 7-30-81; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1942

Community Facility Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding Community Facility loans to allow FmHA District

Directors to redelegate their duties authorized under Community Facility Program regulations. The intended effect of this action is to allow District Directors to utilize qualified staff members to the fullest extent. This action is taken as a result of an administrative decision.

EFFECTIVE DATE: July 31, 1981.

FOR FURTHER INFORMATION CONTACT: Gary J. Morgan, Civil Engineer, Farmers Home Administration, USDA, Room 6318, South Agriculture Building, 14th and Independence Avenue, SW, Washington, DC 20250, Telephone: (202) 447–5717.

SUPPLEMENTARY INFORMATION: It has been determined that this final action relates solely to internal agency management and is therefore exempt from the requirements of Executive Order 12291 and Secretary's Memorandum 1512–1. The FmHA programs and projects which are affected by this instruction are subject to State and local clearinghouse review in the manner delineated in FmHA Instructions 1901–H.

CFDA No. 10.418, Water and Waste Disposal Systems for Rural Communities. CFDA No. 10.423, Community Facilities Loans.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statement." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 19–190, an Environmental Impact Statement is not required.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemptions in 5 USC 553 with respect to such rules. This action, however, is not published for proposed rulemaking since the purpose of the change is administrative in nature and publication for comment is unnecessary.

The State Director is responsible for implementing the authorities contained in 7 CFR 1942, Subpart A and for issuing State supplements redelegating these authorities to appropriate FmHA employees. This final rule amends Section 1942.15 of Subpart A and provides District Directors, the State Director's subordinates, a similar redelegation ability. District Directors, except for loan and grant approval authority, may redelegate their duties to qualified staff members.

Therefore, Subpart A of Part 1942, Chapter XVIII, Title 7, Code of Federal Regulations is amended by revising § 1942.15 to read as follows:

§ 1942.15 Delegation and redelegation of authority.

The State Director is responsible for implementing the authorities contained in this Subpart and to issue State supplements redelegating these authorities to appropriate FmHA employees. Except for loan and grant approval authority, District Directors may redelegate their duties to qualified staff members as appropriate. Loan and grant approval authority is contained in Subpart A of Part 1901 of this Chapter.

(7 USC 1989; 7 CFR 2.33, 7 CFR 2.70)

Dated: July 14, 1981.

Dwight O. Calhoun,

Acting Administrator, Farmers Home Administration.

[FR Doc. 81–22385 Filed 7–30–81; 8:45 am]

BILLING CODE 3410–07–M

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7 CFR Part 1962

Servicing and Liquidation of Chattel Security

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) adds regulations pertaining to the rotation of grain crops that are covered by an FmHA lien and the Commodity Credit Corporation (CCC) Grain Reserve Program to the Code of Federal Regulations (CFR). The intended effect of these regulations is to provide a memorandum of understanding between FmHA and CCC whereby the CCC can relinquish its first lien position on the original grain reserve crop to FmHA and in turn the FmHA can relinquish its first lien position to CCC on the replacement grain reserve crop. The addition will enable the borrower to maintain quality grain while it is under the CCC grain storage program.

EFFECTIVE DATE: July 31, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn L. Pickinpaugh, Acting Director, Farm Real Estate and Production Loan Division, FmHA, USDA, Room 5314, South Agriculture Building, 14th and Independence Avenue, SW., Washington, D.C. 20250, (202) 447–5044.

The Final Impact Statement describing the options considered in developing this final rule and impact of implementing each option is available on request from the Office of the Chief, Directives Management Branch, USDA, FmHA, Room 6346–S, South Agriculture Building, Washington, D.C. 20250, Phone: 202–447–4057.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 and Executive Order 12291 and has been classified "not major." This regulation does not directly affect any FmHA programs or projects which are subject to A–95 Clearinghouse review. The Catalog of Federal Domestic Assistance numbers include Nos. 10.404 Emergency Loans, 10.406 Operating Loans, and 10.428 Economic Emergency Loans. This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required. On January 29, 1981, FmHA published for comment in the **Federal Register** at 46 FR 9617 a proposed rule to add a Memorandum of Understanding between Farmers Home Administration and Commodity Credit Corporation for rotation of grain crops as Exhibit C to Subpart A of Part 1962, Chapter XVIII, Title 7, Code of Federal Regulations. No comments were received. References to the new Exhibit are added in § 1962.30. In 44 FR 37904 published June 29, 1979, FmHA removed Part 1862 and added a new Subpart B of Part 1951, Chapter XVIII, Title 7, in the Code of Federal Regulations. A cross-reference change was inadvertently omitted from § 1962.49(e)(3)(ii) of Subpart A of Part 1962. This change is being made in this document.

PART 1962—PERSONAL PROPERTY

Accordingly, Subpart A of Part 1962 is amended as follows:

1. Section 1962.30 (e) is revised and (e)(4) is added to read as follows:

§ 1962.30 Subordination and waiver of FmHA liens on chattel security.

* * * * *

(e) *Loans under CCC program.* See Exhibits B and C of this Subpart. * * *

(4) When the borrower wishes to rotate or exchange a new crop for an old crop that is stored under the CCC Grain Reserve Program, the County Supervisor and the ASCS official will proceed as set out in Exhibit C of this Subpart.

2. In § 1962.49(e)(3)(ii), "Part 1862 of this Chapter (FmHA Instruction 451.2)" is changed to "Part 1951, Subpart B."

3. Exhibit C is added and reads as follows:

Exhibit C—Memorandum of Understanding Between Farmers Home Administration and Commodity Credit Corporation

Rotation of Grain Crops

Under the Commodity Credit Corporation (CCC) Farmer-Owned Grain Reserve Program, a producer may request to rotate or exchange new crop grain for the original crop grain that is in the Farmer-Owned Grain Reserve Program and already encumbered by CCC. The Farmers Home Administration (FmHA) may have subordinated their first lien position to CCC on the original grain placed in reserve and/or may have a first lien on the new crop. FmHA and CCC desire to devise a mechanism whereby the CCC can relinquish its first lien position on the original grain reserve crop to FmHA and in turn the FmHA can relinquish its first lien position to CCC on the replacement grain reserve crop.

Now, therefore, it is agreed as follows:

(1) Upon receipt of a memorandum from an Agricultural Stabilization and Conservation Service (ASCS) County Executive Director or other designated county office official requesting the rotation of a grain reserve crop for a producer borrower(s), the FmHA County Supervisor and the ASCS county office official will jointly indicate approval or rejection of the request on the bottom of the original and a copy of the memorandum (Approval Memorandum) as follows:

"We hereby agree to and authorize the rotation of the subject producer's grain crops in accordance with the provisions of the Memorandum of Understanding between Farmers Home Administration and Commodity Credit Corporation dated———."

FmHA ———

ASCS ———

In the memorandum, ASCS will include the name(s) of the producer(s) desiring to rotate the grain crops, the approximate number of bushels being rotated, the type of crop, years' crop being rotated and the location of the original grain reserve crop (approximate land and facility description).

(2) Upon execution of the Approval Memorandum by both ASCS and FmHA, the security interest of FmHA in the new crop grain shall be subordinated to the security interest of CCC in such grain and the security interest of CCC in the original crop grain shall be subordinated to the security interest of FmHA in such grain. At that point in time it will be the responsibility of each agency and the borrower to account for their respective interests in the grain crops and/or proceeds from the sale of the grain. The crop rotation and subordination of liens will only involve the amount of grain that has been specifically provided for in the memorandum from ASCS.

(3) If there is an intervening third party lien and it is impossible for FmHA or CCC to have a first lien on their respective grain crops, the request of the producer to rotate crops will not be granted.

(4) Nothing contained in this Memorandum of Understanding shall be construed to affect the rights and obligations of the parties except as specifically provided herein.

(5) This agreement may be terminated by either party on 30 days written notice to the other party.

Dated: June 17, 1981.

Everett Rank,

Executive Vice President, CCC.

Dated: June 10, 1981.

Dwight O. Calhoun,

Acting Administrator, FmHA.

(7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70)

Dated: June 10, 1981.

Dwight O. Calhoun,

Acting Administrator, Farmers Home Administration.

[FR Doc. 81-22304 Filed 7-30-81; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of U.S. Air, Inc. and Name Change of Allegheny Airlines, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: The amendment adds U.S. Air, Inc. which was formerly "Allegheny Airlines, Inc." to the listing of carriers which entered into agreements with the Service for the preinspection of their passengers and crews at places outside the United States and deletes Allegheny Airlines, Inc. from the list of carriers agreeing to such preinspection at Nassau, substituting U.S. Air, Inc. On July 8, 1981 and July 14, 1981, U.S. Air, Inc. entered into agreements which provide that its passengers and crews are to be preinspected at Freeport and at Nassau, respectively, prior to departure to the United States.

DATES: Agreement for preinspection at Freeport, effective: July 8, 1981; Agreement for preinspection at Nassau for preinpsection, effective: July 14, 1981.

FOR FURTHER INFORMATION CONTACT: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, N.W., Washington, DC 20536. Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: This amendment to 8 CFR 238.4 is published pursuant to 5 U.S.C. 552. The Commissioner of the Immigration and Naturalization Service entered into agreements with U.S. Air, Inc. on July 8, 1981 and July 14, 1981, to guarantee the preinspection of its passengers and crews at Freeport and at Nassau, respectively, as provided by section 238(b) of the Act (8 U.S.C. 1228(b)). U.S. Air, Inc. is the former Allegheny Airlines, Inc. which was listed as a carrier agreeing to the preinspection of its passengers and crews at Nassau. This amendment deletes Allegheny Airlines, Inc. from that list, substituting U.S. Air, Inc. Preinspection outside the United States facilitates processing passengers and crews upon arrival at a U.S. port of entry and is a convenience to the traveling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment adds a transportation line to the listing and is editorial in nature.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

§ 238.4 [Amended]

Accordingly, 8 CFR Part 238 is amended by adding "U.S. Air, Inc." in appropriate alphabetical sequence, to the list of carriers in § 238.4 *Preinspection outside the United States* under "At Freeport" and "At Nassau" and by deleting "Allegheny Airlines, Inc." from under "At Nassau."

(Secs. 103 and 238; 8 U.S.C. 1103 and 1228)

Dated: July 24, 1981.

Doris M. Meissner,

Acting Commissioner of Immigration and Naturalization.

[FR Doc. 81-22344 Filed 7-30-81; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 556

[No. 81-409]

Statement of Policy Regarding Due-on-Sale Clauses in Mortgage Loan Contracts

July 23, 1981.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Board is reiterating its longstanding policy regarding the preemptive nature of its regulations authorizing Federally-chartered savings and loan associations to include due-on-sale clauses in their mortgage loan contracts and to exercise such clauses subject only to express limitations imposed by the Board. The Board is taking this action in order to allay the uncertainty expressed by a few State Courts.

EFFECTIVE DATE: July 23, 1981.

FOR FURTHER INFORMATION CONTACT: Harvey Simon, Associate General Counsel, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, (202–377–6420).

SUPPLEMENTARY INFORMATION: On July 31, 1976, the Federal Home Loan Bank Board codified its confirmation of the authority of Federal savings and loan associations to include and exercise acceleration or "due-on-sale" clauses in their mortgage loan contracts subject only to such limitations as the Board imposed. In Board Resolution No. 76–296, 41 FR 18286 (May 3, 1976), the Board added new due-on-sale provisions to its regulation pertaining to loan contracts (12 CFR 545.6–11) and to its statements of policy (12 CFR 556.9).

New paragraph (f) of Federal Regulation § 545.6–11, now re-codified at § 545.8–3(f), provided:

> A Federal association continues to have the power to include, as a matter of contract between it and the borrower, a provision in its loan instruments whereby the association may, at its option, declare immediately due and payable sums secured by the association's security instrument if all or any part of the real property securing the loan is sold or transferred by the borrower without the association's prior written consent * * *.

In addition, in the preamble contained in Resolution No. 76–296, the Board stated:

> [I]t was and is the Board's intent to have * * * due-on-sale practices of Federal associations governed exclusively by Federal law. Therefore, * * * exercise of due-on-sale clauses by Federal associations shall be governed and controlled solely by § 545.6–11 and the Board's new Statement of Policy. Federal associations shall not be bound by or subject to any conflicting State law which imposes different * * * due-on-sale requirements * * *.

Notwithstanding these plain pronouncements, the Board now considers it desirable to re-affirm explicitly the preemptive nature of its due-on-sale regulations by codification in the policy statement at 12 CFR 556.9, in order to allay the uncertainty expressed by a few state courts regarding this matter. The Board also has taken this opportunity to set forth its judgment regarding the importance of due-on-sale clauses to Federal associations, and to codify its rationale for authorizing rather than compelling use of the due-on-sale clause by Federal associations, i.e. to provide greater flexibility to associations in tailoring their mortgage documents to accommodate special circumstances.

The Board finds that observance of the notice and public comment procedures and delay of effective date required pursuant to §§ 508.12 and 508.14, and 5 U.S.C. 553 (b) and (d), respectively, would be unnecessary because this amendment pertains to a general statement of policy.

Accordingly, the Board hereby amends Part 556 of Subchapter C, Chapter V, Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 556—STATEMENTS OF POLICY

Amend § 556.9 by adding a new paragraph (f) thereto, to read as follows:

§ 556.9 Imposition of late charges and due-on-sale clauses.

* * * * *

(f) *Due-on-sale policy and Federal preemption.* (1) Federal associations are obliged to take reasonable precautions to protect themselves against the economic risks associated with mortgage lending, including the risk that the cost of lendable funds will exceed the yield from existing mortgage loans, and that sharply rising interest rates will reduce substantially the value of existing mortgage assets. In this connection, the Board has determined that the due-on-sale clause normally is a valuable and often an indispensable source of protection for the financial soundness of Federal associations and for their continued ability to fund new home loan commitments. Consequently, the Board for many years has authorized due-on-sale clauses for use by Federal associations. However, because the Board desires to afford associations the flexibility to accommodate special situations and circumstances, § 545.8–3(f) of this Subchapter by its terms merely authorizes rather than compels the inclusion and exercise of due-on-sale clauses in mortgage loans.

(2) Paragraph (f) of § 545.8–3 confirms the continuing authority of Federal associations to include due-on-sale clauses in their mortgage loan contracts and to exercise such clauses, subject only to the express limitations contained in § 545.8–3(g). Due-on-sale practices of Federal associations shall be governed exclusively by the Board's regulations, in preemption of and without regard to any limitations imposed by state law on either their inclusion or exercise (including, but not confined to, state law prohibitions against restraints on alienation, prohibitions against penalties and forfeitures, equitable restrictions and state law dealing with equitable transfers).

(Sec. 5, 48 Stat. 132, as amended; (12 U.S.C. 1464), Reorg. Plan No. 3 of 1947; 3 CFR, 1943–48 Comp.)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 81–22372 Filed 7–30–81; 8:45 am]

BILLING CODE 6720–01–M

CIVIL AERONAUTICS BOARD

14 CFR Part 385

[OR–182]

Delegations and Review of Action Under Delegation; Correction

AGENCY: Civil Aeronautics Board.

ACTION: Erratum to OR–182.

SUMMARY: The CAB corrects final rule OR–182 (46 FR 34561, July 2, 1981), which was printed with a misplaced word. The final rule amended several Board delegations of authority to the Director, Bureau of International Aviation, and made new delegations.

DATE: Effective July 1, 1981.

FOR FURTHER INFORMATION CONTACT: Christina R. Pfirrman, Legal Division, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Ave., NW., Washington, D.C. 20428; (202) 673–5203.

SUPPLEMENTARY INFORMATION: In newly added paragraph 14 CFR 385.26(x) the word "or" was incorrectly placed after clause (3) instead of between clauses (2) and (3).

Accordingly, § 385.26(x) is corrected to read as follows:

§ 385.26 [Amended]

* * * * *

(x) With respect to applications filed under sections 401 and 402 of the Act for authority to engage in foreign air transportation:

(1) Issue an order to show cause proposing to grant such application in those cases where no objections to the application have been filed and where the applicant has already been found by the Board to be fit, willing and able to provide service of the same basic scope and character;

(2) Issue an order stating the Board's intention to process the application through show cause or other expedited procedures, where the course of action is clear under Board policy; or

(3) Issue an order, subject to presidential review under section 801(a) of the Act, finalizing an order to show cause issued under paragraph (1) of this subsection where no objections to the order to show cause have been filed.

Dated: July 27, 1981.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-22380 Filed 7-30-81; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 377

Removal of Quantitative Limitations on Exports of Certain Low-Octane, High-Paraffinic Naphthas

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This action removes quantitative limitations for the export of low-octane, high-paraffinic naphthas for the production of petrochemicals. This action is being taken in response to the European Communities' request and following an interagency review of export restrictions on unfinished naphthas used for petrochemical feedstocks. Liberalization of export controls will have minimal impact on available domestic supplies.

EFFECTIVE DATE: July 28, 1981.

FOR FURTHER INFORMATION CONTACT: Robert F. Kan, Acting Director, Short Supply Division, Office of Export Administration, U.S. Department of Commerce, P.O. Box 7138, Washington, D.C. 20230 (Telephone: 202-377-3795).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

Section 13(a) of the Export Administration Act of 1979 (Pub. L. 96-72, to be codified at 50 U.S.C. app. 2401 *et seq.*) ("the Act") exempts regulations promulgated under the Act from the public participation in rulemaking procedures of the Administrative Procedure Act. Section 13(b) of the Act, which expresses the intent of Congress that to the extent practicable "regulations imposing controls on exports" be published in proposed form, is not applicable because this regulation does not impose new controls on exports. Therefore, this regulation is issued in final form. Comments were solicited and received on this proposal in response to an earlier notice, however, public comments on this regulation are welcome on a continuing basis.

This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Substance of the Regulation

On September 30, 1976 (as announced in the **Federal Register** on October 7, 1976 (41 FR 44155)) exports of naphtha, mineral spirits, naphtha solvents and other finished light petroleum products, n.e.c., became subject to quantitative limitations with export quotas established at historical levels. On April 7, 1977 (42 FR 18395) the Department announced that quantitative limitations based upon the historical pattern of exports must be maintained for those naphthas capable of being used as a fuel, either alone or when blended with other petroleum products, or which are suitable for further refining or for use as a feedstock for petrochemical or synthetic natural gas production. However, in that notice, those naphthas with certain distillation ranges and solvency values, or shipped in small containers, may be licensed without quantitative limitations.

In the June 23, 1981, **Federal Register** (46 FR 32431), the Department announced that certain specialty naphthas, mineral spirits, solvents and other finished light petroleum products n.s.p.f. which are packaged and shipped in drums or containers not exceeding 55 gallons, could be exported without being subject to validated licensing utilizing General License G-NNR.

On March 18, 1981, the Department announced it was reviewing export restrictions on certain unfinished naphthas used for petrochemical feedstocks. This action was taken because the Commission of the European Communities (E.C.) requested modification of U.S. export controls on naphthas capable of use in the petrochemical industry. This concern was expressed by the E.C. in consultations under GATT Article XXIII (1). Also, as reported in the March 18 Notice, preliminary indications were that removal or modification of export limitations on these products would not have a detrimental effect on domestic energy supplies, and appearances were that if such action were taken, the national interest would be served by broadening markets for naphthas unsuitable or unneeded for domestic consumption. Consequently, the Department invited public comment on the merits of removing or revising these export limitations.

Responses were received from ten companies, interested trade associations, and the European Community. All of the comments favored liberalization, *i.e.*, lifting of quantitative export restrictions on naphthas. One trade association representing 19 petrochemical companies opposed the limited approach, however favored a broader export liberalization to include all naphthas, citing that export relief on a narrow scope of paraffinic naphthas had the potential of price and market distortions. This response went beyond the scope of this review.

A major concern of the trade association was that paraffinic naphthas will be used in the manufacture of gasoline. End-use regulatory controls would mandate compliance that these commodities will be used for petrochemical feedstock.

Other comments included such statements as:

- Low octane, high-paraffinic naphthas are finding less use as leaded gasolines are phased out of use and accordingly, these naphthas are in plentiful supply with prices below world market levels;
- U.S. refineries, operating at considerably less than installed capacity, can produce additional naphthas without adversely affecting output of transportation fuels;
- Elimination of export restrictions will encourage the direction of these products to the highest valued-uses and will encourage more efficient utilization of U.S. supplies of hydrocarbons;
- Decontrol will increase petroleum industry efficiency, productivity, and competitiveness and, thus, benefit the U.S. consumer; and
- In a non-emergency supply environment, export limitations are unnecessary to assure that domestic demands for fuels and petrochemical products are satisfied . . . the market will balance supply and demand.

In light of these comments, in an effort to be responsive to the desires of the European Communities, and after consultation with other interested agencies, the Department is removing all quantitative export limitations on the specific naphthas which were subject to the public comment. This decision is in keeping with the Administration's policy

of removing burdensome export regulations when no longer warranted. The removal of quantitative restraints on the export of low-octane, high-paraffinic (65% or higher) naphthas is made effective immediately as of the effective date stated above.

The Department has further determined that this action will not adversely affect domestic energy supplies, nor will foreign demand have a serious inflationary impact. This action is considered to be in the national interest by expanding markets for the domestic industry. Should this action have an adverse effect on available domestic energy supply, either directly or indirectly, exporters are placed on notice that this liberalization action can be swiftly reversed.

PART 377—SHORT SUPPLY CONTROLS AND MONITORING

Accordingly, Part 377 of the *Export Administration Regulations* (15 CFR Part 377) is amended as follows:

1. Sections 377.6(d)(7) and 377.6(e)(9) are revised as follows:

§ 377.6 Petroleum and petroleum products.

* * * * *

(d) * * *

(7) *Groups N–1, N–2 and N–3.* An application for a validated license to export a commodity from Petroleum Commodity Group N–1, N–2 or N–3 as established in Supplement No. 2 will be considered if submitted with supporting documentation as required by 377.6(e)(9) by the date specified in Supplement No. 2. Applications to export commodities from Group N–1 will be considered only to the extent of an exporter's quota share for such commodity. Applications to export commodities from Group N–2 and N–3 will be considered without regard to quota limitation.

* * * * *

(e) * * *

(9) *Groups N–1, N–2 and N–3.*—(i) *Group N–1.* An application for a validated license to export a commodity from Petroleum Commodity Group N–1 must be submitted with the same documentation required by § 377.6(e)(1), except the affidavit described in § 377.6(e)(1)(iii) is not required.

(ii) *Group N–2.* An application for a validated license to export a commodity from Petroleum Commodity Group N–2 must be submitted with the documentation required by § 377.6(e)(1)(i), (ii), and (iv) and:

(A) An end-use statement by the applicant in affidavit format indicating the name, location and type of business of the end-user, the nature of the end-use, and stating that, to the best of his knowledge and belief, the commodity will not be used as a fuel either alone or when blended with other petroleum products, nor will it be used as a refinery feedstock or for synthetic natural gas production, nor will it be substituted for a commodity which will be so used; and

(B) A published technical data sheet (unless one has previously been submitted) or independent inspector's certificate of analysis of the product to be exported which clearly indicates that the commodity is properly classifiable under Petroleum Commodity Group N–2.

(iii) *Group N–3.* An application for a validated license to export a commodity from Petroleum Commodity Group N–3 must be submitted with the documentation required by § 377.6(e)(1)(i), (ii), and (iv), and:

(A) An end-use statement by the applicant in affidavit format indicating the name, location and type of business of the end-user, and the nature and identity of the petrochemical to be produced from the Group N–3 commodity; and

(B) A published technical data sheet or an independent inspector's certificate of analysis of the product to be exported verifying the paraffinic content using established ASTM tests.

* * * * *

2. Supplement No. 2 to Part 377 is amended by revising Group N–1, by adding a new Group N–3 following Group N–2, and by revising the introductory language that precedes the country quotas for Group N–1, as follows:

Supplement No. 2 to Part 377.—*Petroleum and Petroleum Products Subject to Short Supply Licensing Controls*

* * * * * * *

Schedule B No.[1]	Commodity description[2]	Unit of quantity[3]
	Petroleum products subject to validated licensing and historical quotas	
*	* * * * * *	*
475.3500	Group N-1: Naphtha, mineral spirits, solvents and other finished light petroleum products n.s.p.f., which are (a) * * * capable of being used as a fuel, either alone or when blended with other petroleum products, or (b) suitable for use in refinery processing or synthetic natural gas production, but excluding (1) naphthas having a distillation dry point of 440° F or more, or (2) naphthas having a Kauri-Butanol value of less than 35 as determined by the ASTM D-1133 Test Method.	Barrel.
475.6781		
*	* * * * * *	*
	Petroleum products subject to validated licensing but not quotas	
*	* * * * * *	*
475.3500	Group N-3: Low-octane, high-paraffinic naphthas (65% or higher paraffin content as determined by the ASTM D-1319, D-1491 or D-1492 test methods) suitable for feedstock for petrochemical production.	Barrel.
475.6781		
431.0290		
*	* * * * * *	*

[1] Schedule B Nos. are provided only as a guide to proper completion of the Shipper's Export Declaration, Form No. 7525 V.
[2] Commodity description determines the product under control.
[3] Report commodities in units of quantity indicated.

Quarterly Country Quotas

Country Quotas For Group N–1

Schedule B. No. 475.3500, Schedule B. No. 475.6781, Naphtha, mineral spirits, solvents, and other finished light petroleum products, n.s.p.f., which are (a) capable of being used as a fuel, either alone or when blended with other petroleum products, or (b) suitable for use in refinery processing or synthetic natural gas production, but excluding (1) naphthas having a distillation dry point of 440°F. or more, or (2) naphthas having a Kauri-Butanol value of less than 35 as determined by ASTM D1133 Test Method.

* * * * *

Drafting Information

The principal author of these rules is Robert F. Kan, Acting Director, Short Supply Division, Office of Export Administration.

(Secs. 7, 12, 13, 15, and 21, Pub. L. 96–72, 50 U.S.C. App. 2401 *et seq.*; E.O. 12214 (45 FR 29783, May 6, 1980); sec. 103, Pub. L. 94–163, 42 U.S.C. 6212; 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 28, 1981.

William V. Skidmore,

Director, Office of Export Administration.

[FR Doc. 81-22375 Filed 7-28-81; 4:09 pm]

BILLING CODE 3510-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs not Subject to Certification; Dinoprost Tromethamine Sterile Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by the Upjohn Co., providing for use of dinoprost tromethamine injectable for abortion of feedlot cattle.

EFFECTIVE DATE: July 31, 1981.

FOR FURTHER INFORMATION CONTACT: William D. Price, Bureau of Veterinary Medicine (HFV-123), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed a supplemental NADA (108-901) providing for intramuscular use of dinoprost tromethamine for abortion of feedlot cattle. Upjohn also holds approval for intramuscular use of the drug in beef cattle, nonlactating dairy heifers, and mares for synchronization of estrus. The regulations are amended to reflect approval of the supplemental NADA. The regulations are further amended to delete the drug's chemical name (currently listed in the U.S. Adopted Name) and to delete from the text of the individual approved uses certain common warning and precautionary statements and consolidate them in a "Special considerations" paragraph.

Under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this supplement involves a Category II change. Approval of this supplemental application required a reevaluation of the human safety data base for the drug because of the expansion of use into a new production class (feedlot cattle) for the abortifacient claim. Data provided by Upjohn along with that available in the published literature demonstrate no concern for carcinogenic potential of the drug and are adequate to satisfy the agency's general food safety requirements. Because the dose of the new claim will not exceed the approved dosage (25 milligrams) of dinoprost, data provided by the sponsor in the parent application and in the supplemental application support waiver of requirement for a regulatory method for this supplemental application.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (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.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 522 is amended in § 522.690 by revising paragraphs (a), (b), (c), and (d)(1)(iii), by removing paragraph (d)(2)(iii)(*e*) and (*f*) and redesignating (*g*) and (*e*), and by adding new paragraph (d)(3), to read as follows:

§ 522.690 Dinoprost tromethamine sterile solution.

(a) *Specifications.* Each milliliter of sterile solution contains the equivalent of 5 milligrams of dinoprost.

(b) *Sponsor.* See No. 000009 in § 510.600(c) of this chapter.

(c) *Special considerations.* Women of child-bearing age, asthmatics, and persons with bronchial and other respiratory problems should exercise extreme caution when handling this product. Dinoprost tromethamine is readily absorbed through the skin and can cause abortion and bronchiospasms. Accidental spillage on the skin should be washed off immediately with soap and water. Use of this product in excess of the approved dose may result in drug residues. Do not administer to pregnant cattle unless abortion is desired. Do not administer intravenously; this may potentiate adverse reactions.

(d) * * *

(1) * * *

(iii) *Limitations.* For use once as a single intramuscular injection. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

(3) *Feedlot cattle*—(i) *Amount.* Five milliliters (equivalent to 25 milligrams of dinoprost), as a single injection.

(ii) *Indications.* For its abortifacient effect in feedlot cattle.

(iii) *Limitations.* For intramuscular use only, during first 100 days of gestation. Cattle that abort will abort within 35 days after injection. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. July 31, 1981.

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

Dated: July 24, 1981.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 81-22367 Filed 7-30-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject To Certification; Iron Hydrogenated Dextran Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Wendt Laboratories providing for safe and effective use of an iron hydrogenated dextran injection for prevention or treatment of iron deficiency anemia in baby pigs.

EFFECTIVE DATE: July 31, 1981.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Wendt Laboratories, Inc., 100 Nancy Drive, Belle Plaine, MN 56011, filed an NADA

(119–142) providing for intramuscular use of an iron hydrogenated dextran injection for baby pigs for prevention and treatment of iron deficiency anemia. Approval is based on generic equivalence to identical products which were reviewed by the National Academy of Sciences/National Research Council (NAS/NRC), found effective for prevention or treatment of baby pig anemia due to iron deficiency, and codified in 21 CFR 522.1183. The NAS/NRC notice was published in the **Federal Register** of February 14, 1969 (34 FR 2211). In addition, Wendt was authorized by Chemdex, Inc., Hollywood, FL, to incorporate by reference any material in their NADA 12–685 or MF–336 required to support approval of Wendt's NADA 119–142. Based on the data and information in the NAS/NRC reviews and the information incorporated herein by reference, the NADA is approved and the regulations amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

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

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i); 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 21 CFR 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 522 is amended in § 522.1183 by revising paragraph (d)(1) to read as follows:

§ 522.1183 Iron hydrogenated dextran injection.

* * * * *

(d)(1) *Sponsor.* See Nos. 015562 and 015579 in § 510.600(c) of this chapter.

* * * * *

Effective date. This regulation is effective July 31, 1981.

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

Dated: July 24, 1981.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 81–22366 Filed 7–30–81; 8:45 am]

BILLING CODE 4110–03–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for International Nutrition, Inc., providing for safe and effective use of 9.6- and 19.2-gram-per-pound pyrantel tartrate premixes for making complete swine feeds.

EFFECTIVE DATE: July 31, 1981.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Bureau of Veterinary Medicine (HFV–138), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

SUPPLEMENTARY INFORMATION: International Nutrition, Inc., 6664 L St., Omaha, NE 68117, is the sponsor of NADA 121–337 submitted on its behalf by Pfizer, Inc. The NADA provides for use of premixes containing 9.6 and 19.2 grams of pyrantel tartrate per pound for making complete swine feeds used as an aid in prevention of migration and establishment of large roundworm (*Ascaris suum*) infections, an aid in prevention of establishment of nodular worm (*Oesophagostomum*) infections, and for removal and control of large roundworm (*Ascaris suum*) and nodular worm (*Oesophagostomum*) infections.

Approval of this application relies on safety and effectiveness data contained in Pfizer's approved NADA 43–290. Use of the data in NADA 43–290 to support this application has been authorized by Pfizer. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy, (42 FR 64367; December 23, 1977), the approval of this NADA has been treated as would approval of a Category II supplement and did not require reevaluation of the safety and effectiveness data in NADA 43–290.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.485 by adding new paragraph (a)(10) to read as follows:

§ 558.485 Pyrantel tartrate.

(a) * * *

(10) To 043733: 9.6 and 19.2 grams per pound, paragraph (e) (1) through (3) of this section.

* * * * *

Effective date. This regulation is effective July 31, 1981.

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

Dated: July 15, 1981.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 81–22179 Filed 7–30–81; 8:45 am]

BILLING CODE 4110–03–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Seeco, Inc., providing for safe and effective use of 9.6-and 19.2-gram-per-pound pyrantel tartrate premixes for making complete swine feeds.

EFFECTIVE DATE: July 31, 1981.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Bureau of Veterinary Medicine (HFV–138), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

SUPPLEMENTARY INFORMATION: Seeco, Inc., PO Box 1014, Willmar, MN 56201, is the sponsor of NADA 123–000 submitted on its behalf by Pfizer, Inc. The NADA provides for use of premixes containing 9.6 and 19.2 grams of pyrantel tartrate per pound for making complete swine feeds used as an aid in prevention of migration and establishment of large roundworm (*Ascaris suum*) infections, an aid in prevention of establishment of nodular worm (*Oesophagostomum*) infections, and for removal and control of large roundworm (*Ascaris suum*) and nodular worm (*Oesophagostomum*) infections.

Approval of this application relies on safety and effectiveness data contained in Pfizer's approved NADA 43–290. Use of the data in NADA 43–290 to support this application has been authorized by Pfizer. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), the approval of this NADA has been treated as would approval of a Category II supplement and did not require reevaluation of the safety and effectiveness data in NADA 43–290.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.485 by adding new paragraph (a)(9) to read as follows:

§ 558.485 Pyrantel tartrate.

(a) * * *

(9) To 011749: 9.6 and 19.2 grams per pound, paragraph (e)(1) through (3) of this section.

* * * * *

Effective date. This regulation is effective July 31, 1981.

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

Dated: July 15, 1981.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 81–22180 Filed 7–30–81; 8:45 am]

BILLING CODE 4110–03–M

21 CFR Part 680

[Docket No. 79N–0097]

Allergenic Products; Antigen E Potency Test; Additional Standards for Miscellaneous Products

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to require a new potency test, revised labeling, and lot-by-lot release standards for short ragweed pollen extracts and extracts prepared from equal parts of giant and short ragweed pollen. The amendments are based on a more precise and reliable potency test for these allergenic products.

EFFECTIVE DATE: January 27, 1982.

FOR FURTHER INFORMATION CONTACT: Michael L. Hooton, Bureau of Biologics (HFB–620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: Allergenic products (extracts) are administered to humans for the diagnosis, prevention, or treatment of allergies. Short ragweed pollen extract is an allergenic product the potency of which is currently measured as either the quantity of protein nitrogen units (PNU) in the extract or a simple ratio of weight of raw source material to volume of extracting fluid (W/V). A radialimmunodiffusion potency test has been developed to measure accurately and reliably the quantity of antigen E, the major allergenic component of short ragweed pollen. Antigen E has been shown to be effective for immunotherapy of ragweed pollen-sensitive individuals and as an indicator to identify such individuals. The test is now available for measuring not only the quantity, but also the potency of the antigen E component of allergenic extracts prepared from short ragweed pollen. The test is also valuable as an identity test to ensure that short ragweed pollen has been used for the manufacture of a short ragweed pollen extract.

In the **Federal Register** of August 3, 1979 (44 FR 45642), FDA proposed amendments to Part 680 (21 CFR Part 680) of the biologics regulations to require the use of the antigen E potency test. The proposed amendments also included proposed labeling requirements and lot-by-lot release standards for short ragweed pollen extracts based on the quantity of antigen E in the extracts. The proposal provided for interested persons to submit written comments by October 2, 1979. At the request of the American Council of Otolaryngology, the comment period was extended to November 10, 1979. The comment period extension was announced in the **Federal Register** of October 19, 1979 (44 FR 60333). Fourteen letters of comment were received in response to the proposal. The comments and FDA's response follow:

General

1. One comment suggested that the regulation not apply to a product that is to be used only as a skin test antigen, i.e., for diagnostic purposes.

The agency rejects this comment. Antigen E has been shown to be effective in identifying persons allergic to ragweed pollen. This regulation

requires a minimum quantity of antigen E in short ragweed pollen extracts and a dating period based on antigen E to ensure that all products containing short ragweed pollen extract retain adequate potency throughout their dating periods when maintained at the recommended temperature. Ensuring the potency of the antigen E will, in turn, help ensure that the product will be an effective diagnostic agent. FDA believes that the user is entitled to a high quality product, regardless of whether it is to be used for diagnosis or therapy.

2. Four comments requested that FDA clarify whether the regulation applies to all extract mixtures that include short ragweed pollen extract and whether such mixtures would have to be tested and labeled for antigen E by manufacturers and lot released by FDA. One of the comments asked whether the regulations apply to products prepared to a physician's prescription.

FDA advises that the regulation applies to short ragweed pollen extract, its dilutions, and any mixed extract that includes short ragweed pollen extract as a component. However, the required potency test must be performed only on short ragweed pollen extracts and equal mixtures of giant and short ragweed pollen extracts. In addition, these two products must be officially released by FDA before marketing, and their labeling must include the antigen E content rather than the statement, "No U.S. Standard of Potency". Although other routinely produced extract mixtures that include short ragweed pollen extract as a component are not required to be subjected to the potency test or lot-by-lot release, such mixtures must be produced from a standardized lot of short ragweed pollen extract that has been released by FDA. Moreover, such extract mixtures are required to include the appropriate antigen E labeling, the statement, "No U.S. Standard of Potency," and the dating period for the mixture shall not exceed the dating period for the short ragweed pollen component. Finally, the same requirements apply to any such extract mixture prepared to a physician's prescription.

3. The proposed rule would have required that when any product includes short ragweed pollen extract at a very dilute ratio, the antigen E content expressed on the labeling may be a calculated value as permitted under § 680.4(b)(2)(iv). FDA reconsidered this portion of the proposal and decided that the term "very dilute ratio" is too vague. For clarity, FDA is amending the final rule in § 680.4(b)(2)(iv) to specify that the antigen E content of products containing short ragweed pollen extract at a concentration more dilute than a weight-to-volume ratio (W/V) of 1:20 may be obtained by calculation and in § 680.4(c)(1)(i) to specify that samples of each lot of short ragweed pollen extract manufactured at W/V ratios of 1:10 or 1:20 be submitted to FDA for testing and official release.

4. Five comments asked FDA to clarify how the regulations would apply to modified extracts, such as formaldehyde-modified extracts or alum-precipitated extracts. The comments pointed out that although the starting material could be assayed for antigen E, the required method may not be suitable for the final product. One of the comments recommended that the test be required only for short ragweed pollen aqueous extracts. Two of the comments requested that the antigen E test not be required for such products if an alternate test is approved in the license application. An affidavit concerning studies using other potency procedures for modified extracts was submitted with one of the comments. One comment suggested that if the regulations do apply to these modified products, then each section that references antigen E should be amended to read, "antigen E or antigen E equivalence", the test should be performed at the appropriate stage of manufacture, and protocols should be submitted to FDA following the completion of testing.

FDA is aware that manufacturers may use methods of manufacture that produce modified products that may not contain the required levels of antigen E detectable by the method prescribed in § 680.4. These manufacturers are, however, required to demonstrate that such modified products contain sufficient quantities of their active components. Accordingly, § 680.4(a)(6) is amended in the final rule to read, "If a lot of extract is prepared by a procedure that does not permit measurement of the antigen E content by the potency test described in this paragraph, a manufacturer may use an alternative method that measures the active component(s) in the product if the Director, Bureau of Biologics has approved such an alternative method, through an approved amendment of the product license." The license amendment for such an alternative test is required to include appropriate potency labeling.

5. One comment asked FDA to clarify how license amendments now approved for antigen E that are somewhat different from the regulations will be affected when these rules become effective.

FDA advises that it is incumbent on manufacturers to amend their license applications consistent with the requirements of the regulations.

6. One comment suggested that where stability data for antigen E have already been submitted by manufacturers and accepted by FDA as a license amendment for a dating period, no further data should be required from these manufacturers.

Only one manufacturer has submitted stability data for antigen E and received approval for an amended dating period. No further stability data are required from this manufacturer except as specified in the approved amendment to the license application.

7. One comment requested FDA to clarify its requirements concerning stability studies for antigen E. The comment asked whether the dating period in § 610.53(a) (21 CFR 610.53(a)), which lists dating periods for specific biological products, should be used on the labeling pending completion of stability studies. Another comment recommended that the dating period in § 610.53(a) be applicable at least for extracts containing 50 percent glycerin pending completion of the stability studies.

FDA recognizes that not all manufacturers will have completed stability studies by the effective date of the final rule. For those manufacturers who have not completed studies and amended their license applications for a dating period for the products, the dating period prescribed in § 610.53(a) may be used in the interim on the label for all affected products, including those containing 50 percent glycerin. When these rules become effective on January 27, 1982, stability studies to support the dating period should be underway consistent with the applicable requirements under §§ 211.137 and 211.166 (21 CFR 211.137 and 211.166). When the stability studies are completed and a license amendment for a new dating period is approved, each lot of product manufactured after the approval is required to be labeled with the new dating period.

FDA advises that the protocol for the stability studies is required to be approved by the Director, Bureau of Biologics, before initiating such studies.

8. One comment questioned whether the proposal would create uniformity of potency for short ragweed pollen extracts.

The regulations in § 680.4(a)(5) promote uniformity in the antigen E potency of the affected extracts by

requiring that each marketed lot of all manufacturers' products contain a minimum quantity of antigen E.

9. One comment suggested that determination of the antigen E potency will not reduce or eliminate systemic reactions. Rather, each patient must be evaluated separately by an appropriate in vivo test, such as a skin test assay using an end point quantitation.

The published data filed with 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, when these rules were proposed demonstrate a high correlation between the antigen E content of the extracts and reactions of skin tests in most allergic human subjects. Accordingly, FDA believes that the labeled antigen E potency of the extracts serves as a valuable aid to physicians concerning the possible reactivity of an extract. FDA recognizes that skin test titrations are medical procedures to be used at the discretion of each physician. However, when all lots of short ragweed pollen extract are standardized, a physician will be able to select a starting test strength from any lot of product with assurance that its skin test reactivity is predictable, thus improving the reliability of these test procedures. Therefore, physicians can continue diagnosis and treatment of patients as in the past, with the added advantage of knowing the antigen E content of each lot of product used, regardless of the manufacturer of the product.

10. One comment stated that antigen E is not stable in short ragweed pollen extract containing phenol as a preservative unless 50 percent glycerin is present as a stabilizer.

FDA rejects this comment. FDA is aware of published data that demonstrate the positive effect of glycerin on the stability of short ragweed pollen extracts. However, FDA permits the manufacture of extracts without glycerin because extracts containing glycerin are not suitable for intradermal injections and may cause discomfort in patients when injected for therapy. In addition, an article published in the *Journal of Biological Standardization*, Vol. 5, pp. 39–44, 1977, which has been placed on file with the Dockets Management Branch, includes data that demonstrate that short ragweed pollen extract without glycerin and containing phenol as a preservative will retain at least half of its antigen E content for approximately 1 year when stored as recommended in the manufacturer's package insert.

11. One comment suggested that there may be an adverse economic impact because of the additional requirements for lot-by-lot release and stability studies.

FDA recognizes that lot-by-lot release of short ragweed pollen extract and extracts prepared from equal parts of giant and short ragweed pollen, and the required stability studies will have some initial economic impact. (See paragraph 34 for a discussion of lot release.) However, the economic consequences are justified by the need to have a better standardized product available to the public. As is restated at the end of this preamble, the economic impact of this rule has been assessed in accordance with Executive Order 12291. As a result of this assessment (a copy of which has been placed on file with the Dockets Management Branch), the agency has concluded that this regulation will not have a significant impact on the economy or the availability of biological products, nor create a major increase in costs for manufacturers, physicians, or consumers, and is not a major rule. Indeed, the regulation should provide an economic benefit to users (physicians) and patients by ensuring that the product contains a sufficient amount of antigen E. Because the label of the products will include the content of the tested allergen, the user can price and purchase the products based on the quantity of allergen the products are known to contain. Thus, consumers will be paying only for the amount of antigen E demonstrated to be present in the product.

12. One comment asked that the effective date be 270 days from the date of publication of the final rule rather than 180 days as announced in the proposal.

FDA rejects this suggestion. FDA believes that 180 days is ample time for manufacturers to prepare for the effective date of these rules. The antigen E test itself is a relatively simple procedure that is performed on a microscope slide. Most manufacturers already have participated in a collaborative study with the Bureau of biologics as a result of a workshop held in 1971. Since that time a number of manufacturers and potential manufacturers have received copies of the assay procedure and samples of the reference preparations.

Potency Test

13. One comment on proposed § 680.4(a) asked that it be amended to require that testing be performed within 90 days rather than 6 weeks for glycerinated, alum-precipitated, and freeze-dried extracts, which are relatively stable.

The agency rejects this comment. FDA finds no reason for requiring a different time frame for testing aqueous extracts and all other types of extracts. A 6-week period from extraction is ample time to prepare any form of the final product and perform the relatively simple antigen E potency test. In addition, FDA believes that a 6-week time frame for testing is consistent with the time frame used by manufacturers for initial testing to develop stability data to support the dating period for each type of product.

14. Two comments on proposed § 680.4(a) asked that it be amended to require that the test be performed in quadruplicate rather than sextuplicate and to provide for retests. The comments stated that a quadruplicate assay would be sufficient to establish a valid potency.

FDA agrees with these comments. FDA has reconsidered the data concerning antigen E testing and concludes that if the test is performed in quadruplicate, the reproducibility of the assays ensures that the potency value obtained will be statistically valid. Therefore, a test may be performed on a single microscope slide using four holes in the hardened agar for the lot being tested and the fifth hole for the antigen E reference preparation. Each microscope slide used for a test is required to always include a sample of the antigen E reference preparation.

Moreover, FDA agrees that provisions for retests are appropriate. However, consistent with § 610.1 (21 CFR 610.1), the results of a test may be disregarded only when it is established that the test is invalid because of causes unrelated to the product. Accordingly, § 680.4(a) is amended in the final rule to require that the test be performed in quadruplicate and to specify the criteria for repeat tests.

15. Two comments on proposed § 680.4(a)(1) asked whether there was an adequate supply of reference materials available for testing. One of the comments asked whether manufacturers should prepare their own reference materials as permitted under the regulations. Another comment asked whether FDA supplies such materials without charge to manufacturers.

FDA will supply adequate amounts of reference materials without charge for testing or for preparing in-house reference systems. However, manufacturers are encouraged to prepare their own reference systems as authorized under § 680.4(a)(4). By means of an in-house reference system, a manufacturer is sure to have the necessary reference materials for testing at all times and without the delay that

would necessarily be involved in requesting that FDA ship the reference materials. If a manufacturer prepares an in-house reference system, the dose-response curves are required to be transformed to a log-linear form with the correlation coefficient (r) being equal to or greater than 0.90 to ensure that the resulting line is an adequate representation of the test points. In addition, the slopes of the reference preparations, when transformed to log-linear form, must not be significantly different at the 95-percent confidence limits. If an in-house reference system does not meet these requirements, a lot of product with an acceptable potency that is tested with that system may not meet the criteria for acceptability when tested by the Bureau of Biologics with the U.S. Reference preparations.

FDA will furnish to manufacturers, in written information that will accompany the U.S. Reference preparation for antigen E, detailed instructions concerning the calculation of antigen E when an extract is tested with an acceptable reference system.

Accordingly, § 680.4(a)(4) is amended in the final rule to clarify the acceptability of an in-house reference system and to refer to the written information that will accompany the U.S. Reference preparation for antigen E.

16. The proposed rule required that, for lot release, manufacturers have to establish that the dose-response curve for the test lot does not differ from that of the U.S. Reference antigen E at the 95-percent confidence level. FDA has determined that the proposed dose-response curve requirements are not appropriate for lots of product that are to be submitted to FDA for release, because the regulation requires that only a single concentration of a lot of product be tested. Accordingly, to preclude confusion, FDA has clarified § 680.4(a)(4) in the final rule by deleting the dose-response curve requirements under proposed paragraph (a)(4)(iii), and by restructuring paragraph (a)(4) into three subparagraphs.

17. One comment on proposed § 680.4(a)(1) recommended that the U.S. Reference preparation for antigen E be prepared annually so that the reference preparation will demonstrate the pollen variability of manufacturers' extracts.

This recommendation is rejected. FDA testing of reference material prepared from pollen obtained during the past several years demonstrated only a 15-percent variability for antigen E. In addition, the regulation does not require that manufacturers use pollen of the current year to prepare extracts. Properly stored pollen has been shown to remain stable in its antigen E activity and may serve as source material for a number of years. Therefore, consistency between reference materials and manufacturers' products would not be expected to increase if the reference antigen E is prepared from short ragweed pollen of the current years.

18. One comment on proposed § 680.4(a)(2)(i) asked FDA to specify the type of agar to be used in the test or refer to a concentration of agar suitable for radialimmunodifusion tests.

FDA agrees with this comment. Various agars have different degrees of purity and different gelling properties, and certain agar products such as those labeled as "agarose", are not suitable for antigen E testing. Other types of agar products such as Agar, Noble, distributed by Difco Laboratories, Inc., or its equivalent, have properties that make them suitable for antigen E testing. To ensure that suitable agars are used, FDA has amended § 680.4(a)(2)(i) to read, "Melt a solution of 1.0 percent agar suitable for the antigen E radialimmunodiffusion potency test, containing 1.0 percent sodium azide, in a boiling water bath and cool in a water bath at a temperature of approximately 50° to 55° C."

19. One comment on proposed § 680.4(a)(5)(ii) suggested that the minimum quantity of antigen E required for standardization be an even number such as 100 units/mL rather than the 135 units/mL as proposed. No data were submitted to support the comment.

FDA rejects this comment. FDA selected the value of 135 units/mL because it was the antigen E content of the first antigen E reference material prepared by the Bureau of Biologics in 1971, and subsequent studies by the Bureau using pollen collected in several different years showed that an extract with a W/V ratio of 1:10 never had an antigen E content of less than 135 units/mL. The experience gained from the one manufacturer that currently labels its short ragweed pollen extracts with the antigen E content also showed that this value was readily achieved. FDA believes that there is no valid reason to adopt an even number such as 100 units/mL, particularly since such a standard would lessen the potency of the standardized product. FDA will, however, continue to review data concerning the required minimum antigen E content and may propose adjustments, as appropriate, as additional data become available.

20. One comment on proposed § 680.4(a)(5)(ii) asked what the antigen E assay tolerance would be for an acceptable test.

An acceptable test when performed by the manufacturer must demonstrate that the antigen E content for a short ragweed pollen extract with a W/V ratio of 1:10 be no less than 135 units/mL, or for an extract with a W/V ratio of 1:20 and mixed extract (equal parts of giant and short ragweed pollen) 67.5 units/mL. Under § 680.4(a)(5) (i) and (iv), the antigen E content of the reference preparation and the lot being tested, respectively, must be within ±25 percent of the claimed value when tested by the Bureau of Biologics. For clarification, § 680.4(a)(5) (ii) and (iii) are amended in the final rule to specify that the claimed antigen E value is obtained from the mean of the analyses of all valid tests performed.

21. One comment on proposed § 680.4(a)(5)(ii) asked whether low potency lots may be combined with high potency lots to produce one lot with an acceptable potency.

FDA believes that if a lot of extract has been inadvertently subjected to conditions adversely affecting the antigen E or other allergens in that lot, then a rapid decline of potency may characterize any combination product that would include that lot. Such a combination product would not be satisfactory. However, the agency recognizes that certain low potency lots may not adversely affect a combination product that would include that lot. FDA believes that it is appropriate for the agency to review, on a case-by-case basis, manufacturers' requests to combine low-potency lots with high-potency lots. Therefore, with the written approval of the Director, Bureau of Biologics, a manufacturer may combine a low potency lot that does not meet the minimum antigen E potency requirements with a higher potency lot to produce a single acceptable lot.

22. One comment on proposed § 680.4(a)(5)(iv) asked that the Bureau of Biologics assay value for a lot be within ±50 percent of the claimed value rather than within ±25 percent as proposed.

FDA rejects this comment. The antigen E test is well established as a reproducible procedure. In addition, experience of the Bureau of Biologics from testing lots currently being submitted for release demonstrates no difficulty in obtaining results within ±25 percent of the claimed value.

23. One comment on proposed § 680.4(a)(5)(iv) recommended that FDA provide an appeal mechanism for disputed laboratory values.

This comment is rejected. FDA will test samples of lots submitted for release using the same antigen E potency test and standard preparations

required of manufacturers. If a lot fails the acceptable criteria when tested at the Bureau of Biologics, retesting will be performed by the Bureau. If a trend develops toward inconsistency of test results obtained by the Bureau and those obtained by a manufacturer, it has been the Bureau's policy to contact the manufacturer to achieve a resolution of the inconsistency. Indeed, manufacturers may be invited to the Bureau to perform testing concurrently with Bureau personnel. The approach described in this paragraph has proven satisfactory to resolve disputes concerning the testing of other biological products, and FDA believes that the approach is appropriate for antigen E testing. Therefore, FDA believes that no change in the regulation to specify a procedure to resolve disputed laboratory values is necessary.

24. One comment on proposed § 680.4(a)(6) suggested that the regulations specify more precise techniques, such as rocket immunoelectrophoresis, as alternate procedures.

This comment is rejected. Section 680.4(a)(6) permits use of alternate potency methods if the manufacturer receives prior approval for the method from FDA. Consequently, there is no reason for specifying an alternate procedure.

Labeling

25. One comment on proposed § 680.4(b)(1) asked what the relative prominence of information on the antigen E potency value should be to information on the PNU value of the W/V ratio.

FDA advises that the official antigen E potency value should be more prominent on the label than the information or the PNU value of the W/V ratio. Accordingly, § 680.4(b)(1)(i) is amended in the final rule to specify that the labeled antigen E value shall appear more prominently than the information on the PNU value or the W/V ratio.

26. One comment on proposed § 680.4(b)(1)(i) suggested that it be clarified to read, "The antigen E or antigen E equivalent content, expressed as units per milliliter, or per vial, or when reconstituted in accordance with instructions."

FDA accepts the suggestion to clarify § 680.4(b)(1)(i) and to permit the units per vial, or when reconstituted in accordance with instructions, to be identified on the labeling, with the further clarification that the labeled antigen E equivalent potency content will be permitted only if an alternate procedure has been approved as provided for under § 680.4(a)(6). Such labeling will provide flexibility to manufacturers for expressing the potency of the product.

27. One comment on proposed § 680.4(b)(1)(i) asked whether the labeled antigen E content should reflect the decline of antigen E during the dating period.

FDA is aware that the antigen E potency may decline during the dating period. After stability studies have been completed, as required under the applicable provisions of §§ 211.137 and 211.166, each manufacturer is required to submit a license amendment for a new dating period that will ensure that its product contains the minimum required potency of antigen E throughout the dating period. FDA has published a separate proposal on July 22, 1980 (45 FR 48918) to clarify § 610.53 with respect to dating periods for allergenic products (also see comment 7 above). The antigen E value expressed on the label, as required under § 680.4(b)(1)(i), shall reflect the antigen E content found at the time the lot is assayed. However, FDA believes that the user of an extract should be aware that the antigen E level may decline more rapidly in certain forms of a final extract than in others. Accordingly, § 680.4(b)(2) is amended in the final rule by adding new paragraph (b)(2)(v) to require that the package insert that accompanies the product includes information concerning the stability of antigen E for that product form and information on the decline in potency of antigen E during the dating period. FDA advises that the required information may be in the form of data produced by the manufacturer or data available in the published literature.

28. One comment on proposed § 680.4(b)(1)(ii) stated that PNU values are not reliable as a measure of potency and should not be continued on the labeling.

This comment is rejected. FDA proposed that the PNU value continue to appear on the label as an aid to users who are not yet familiar with the antigen E potency value. As users become more experienced with antigen E values, FDA will review the necessity to continue PNU value labeling for these products. When FDA determines that PNU value labeling is no longer necessary for antigen E-labeled products, FDA will propose to amend the regulations as appropriate.

29. One comment on proposed § 680.4(b)(2) stated that because information concerning the use of antigen E in the diagnosis and treatment of allergies is not generally known, it is not used in general practice, and is reported only by research centers. One other comment stated that antigen E labeling should not apply to mixtures that do not include short ragweed pollen extract as a major component. Another comment stated that a special labeling insert for the use of antigen E is not necessary because products containing antigen E are used in the same way as other extracts.

These comments are rejected. FDA does not agree that information concerning antigen E is not generally known. Published data and other background information on file with the Dockets Management Branch demonstrate the importance of the proper use of antigen E in the diagnosis and treatment of allergy due to short ragweed pollen. FDA believes that the new information required in the package insert should be available to users of all products containing short ragweed pollen extract, including mixtures, regardless of the ratio of the short ragweed pollen extract component to the final mixture or the methods the user may choose to administer the products. The antigen E labeling for the short ragweed pollen extract component in a mixed extract may be valuable information for a physician in establishing allergy diagnosis and treatment programs using mixed extracts. FDA is aware that physicians in the past have used short ragweed pollen extracts in the same way as other extracts, and they have the discretion to continue to do so. However, FDA is requiring manufacturers to include information concerning antigen E in the package insert to provide physicians with the added advantage of being able to use the information in the diagnosis and treatment of allergies associated with short ragweed pollen. The information will appropriately inform the physician of the applicability of antigen E to the diagnosis and treatment of allergy, the storage conditions necessary to ensure the maximum stability and potency of the product, and the decline in potency in antigen E expected during the dating period.

30. One comment on proposed § 680.4(b)(2)(i) suggested an amendment to clarify that the information required is applicable only to short ragweed pollen extract with an antigen E content as indicated.

FDA is making the suggested change for clarity. Accordingly, § 680.4(b)(2)(i) is amended in the final rule to read, "Information concerning the proper use of the product and its antigen E content as indicated, in the diagnosis and treatment of allergy."

31. One comment on proposed § 680.4(b)(2)(iii) suggested that the required labeling recommending storage

at 2° to 8° C be amended to recommend such storage whenever possible. Another comment expressed concern that this paragraph may be interpreted to require that manufacturers recommend that physicians use refrigerated syringes. One other comment asked whether manufacturers could be exempt from this labeling requirement if they submit stability data supporting storage at a higher temperature.

FDA is requiring that labeling recommend storage at 2° to 8° C at all times to alert users that antigen E is sensitive to, and may decline rapidly at, lower or higher temperatures. This labeling recommendation is not intended to suggest that unfilled syringes be refrigerated before administering the product, nor is there any reason to believe that physicians would so interpret such labels. An article published in the *Journal of Allergy and Clinical Immunology*, Vol. 59, pp. 341–342, 1977, describes a simple method for keeping extracts near 4° C during use. The agency believe that this is one of the possible methods that is appropriate for maintaining a temperature range of 2° to 8° C during in-office use for skin testing and immunotherapy. This published method has been placed on file in the docket of this rulemaking.

A manufacturer's license application may be amended at any time to recommend storage at temperatures other than the recommended 2° to 8° C range, provided that data to support such storage satisfactorily demonstrate that the product will remain stable throughout its dating period.

32. One comment on proposed § 680.4(b)(2)(iv) suggested that calculated values be permitted when a lot consists of no more than 20 final containers or sets of dilutions, or when containers contain no more than one intended human dose.

FDA rejects this comment. FDA believes that each lot of a product must be tested whenever possible to ensure an accurate determination of its potency regardless of the volume of extract produced, the number of containers in the lot, or the dosage in the containers. The regulation provides in § 680.4(b)(2)(iv) that the antigen E content of products that are more dilute than a W/V ratio of 1:20 may be a calculated value only because current methodology may not be adequately sensitive for testing products more dilute than a W/V ratio of 1:20.

Samples and Protocols; Official Release

33. One comment on proposed § 680.4(c)(1)(i) requested that samples other than a W/V ratio or 1:10 or 1:20 be permitted to be submitted to FDA for testing and official release and that the required antigen E content be properly adjusted for the concentration of sample that is submitted. There were no supporting data submitted with this comment.

FDA rejects this comment at this time. FDA believes that extracts with a W/V ratio of 1:10 or 1:20 are the concentrations of short ragweed pollen extract routinely produced by most, if not all, manufacturers. In addition, for concentrations of greater than a W/V ratio of 1:10 it may be difficult technically to extract the antigens from the pollen, while concentrations more dilute than a W/V ratio of 1:20 may not be capable of being tested for antigen E. However, FDA will review any data or information that are submitted in support of release of extracts at concentrations other than a W/V ratio of 1:10 or 1:20. If the data or information are acceptable, FDA will amend the regulations appropriately.

34. FDA is amending the final rule in § 680.4(c)(1)(ii) to define more precisely the written information required for submission by manufacturers to FDA. The intent of this requirement is to enable FDA to obtain the results of all required tests performed by the manufacturer on each lot of short ragweed pollen extract and extract prepared from equal parts of giant and short ragweed pollen. A protocol identifying the lot and consisting of the results of all required tests performed on the lot must be submitted to FDA together with an appropriate sample of each lot for agency review and testing, respectively, and offical release of the lot. Therefore, § 680.4(c)(1)(ii) is amended to read "A protocol consisting of the dates and results of all tests required by the Director, Bureau of Biologics."

35. Ten comments on proposed § 680.4(c)(2) requested deletion or modification of the requirement of official lot-by-lot release of each affected product. Several of the comments expressed concern that the length of time required for lot release would ultimately result in increased costs to physicians and consumers.

FDA rejects these comments. FDA is requiring official release of each lot of short ragweed pollen extract and of extract prepared from equal parts of giant and short ragweed pollen to ensure that the manufactured lot and its subsequent dilutions are in compliance with the required regulatory standards. In addition, although uniformity of potency will increase for these products because a minimum quantity of antigen E will be required for each lot, a wide potency range is known to exist in extracts at this time, and production modifications are still being made to improve the potency of the products. As uniformity in potency of the extracts increases through experience and knowledge gained in production and testing of antigen E, FDA will review the need to continue the requirement for official release of each lot of the affected products. If FDA determines that official release of each lot is no longer necessary, the regulations will be amended as appropriate. Upon application by one manufacturer, FDA has already amended the manufacturer's license to include the antigen E test, and is officially releasing each lot of the product. In the limited experience with this one manufacturer, the maximum time from the receipt of samples to release has been 20 working days. Based on the agency's experience with releasing lots of biological products, including lots produced by the manufacturer whose license now includes the antigen E test, as well as lots of similar products, such as certain insect venoms, satisfactory lots of product will be released expeditiously, so that the official release requirement will have a minimum economic impact on manufacturers, physicians, and, ultimately, consumers.

The economic impact of this rule has been reassessed in accordance with Executive Order 12291. This rule is not a major rule as defined by that Order. Specifically, this rule establishing antigen E potency requirements for certain biological products will not have a significant impact on the economy or the availability of biological products, nor cause a major increase in costs for manufacturers, physicians, or consumers. The assessment that led to the determination that this is not a major rule has been placed on file with the Dockets Management Branch.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 502, 701, 52 Stat. 1050–1051 as amended, 1055–1056 as amended (21 U.S.C. 352, 371)), the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 680 is amended in Subpart A by adding new § 680.4 to read as follows:

PART 680—ADDITIONAL STANDARDS FOR MISCELLANEOUS PRODUCTS

§ 680.4 Short ragweed pollen extracts.

(a) *Potency test.* A potency test for determining the quantity of antigen E in each lot of short ragweed pollen extract and extract prepared from equal parts of giant and short ragweed pollen shall be performed by the manufacturer within 6 weeks of the date of extraction. The test shall be performed in quadruplicate on each lot of extract diluted to a concentration of 20 units per milliliter (±10 units) of antigen E and a U.S. Reference preparation or an in-house reference preparation for antigen E in the same concentration range. The test may be repeated in quadruplicate for each lot of product being tested provided that the antigen E reference preparation is used for each test. The results of a test may be disregarded by the manufacturer only when it is established that the test is invalid due to causes unrelated to the product. The test shall be performed as follows:

(1) *U.S. Reference preparations.* The following U.S. Reference preparations shall be obtained by manufacturers from the Bureau of Biologics, Food and Drug Administration, for use in the potency test for determining antigen E or for use in the preparation of an in-house reference system:

(i) A U.S. Reference preparation of anti-antigen E serum; and,

(ii) A U.S. Reference preparation with a labeled content of antigen E.

(2) *Preparation for the test.* (i) Melt a solution of 1.0 percent agar suitable for the antigen E radialimmunodiffusion potency test, containing 1.0 percent sodium azide, in a boiling water bath and cool in a water bath at a temperature of approximately 50° to 55° C.

(ii) Transfer 0.2 milliliter of the U.S. Reference preparation of anti-antigen E serum (or the in-house reference anti-antigen E serum) into a 100 × 13 millimeter test tube and warm briefly in the 50° to 55° C water bath.

(iii) Transfer 2 milliliters of the agar-sodium azide solution described in paragraph (a)(2)(i) of this section into the test tube containing the reference anti-antigen E serum and stopper the tube.

(iv) Mix the solution in the test tube by rapidly inverting the test tube five times, and pour the mixture onto a microscope slide (approximately 25 × 76 millimeters) that previously had been coated with a solution of 0.1 percent agar and permitted to air dry. The microscope slide shall be on a level surface as determined by a spirit level.

(v) After the agar-sodium azide solution has hardened, place the microscope slide onto a sheet of graph paper that has a template with five evenly spaced dots.

(vi) Push a metal cutter designed to cut a hole 3 millimeters in diameter into the hardened agar at each dot on the template and remove the plug with suction applied to a glass capillary that has been placed inside the metal cutter.

(3) *The test.* (i) Using a fine capillary tube to which a rubber bulb has been attached, transfer an appropriate dilution of extract or U.S. Reference for antigen E (or the in-house reference antigen E) into the holes in the hardened agar in a manner that completely fills but does not overflow the holes.

(ii) Place the microscope slide inside a petri dish that has wet filter paper on the bottom and incubate at 20° to 25° C for at least 48 hours.

(iii) Transfer the microscope slide to a staining dish and cover with 10 percent acetic acid for not longer than 2 minutes.

(iv) Wash the microscope slide with a solution of 1.0 percent sodium chloride.

(v) Under a fluorescent light against a dark background, measure the diameter of the circles of precipitate to the nearest 0.1 millimeter with a micrometer or other instrument capable of measuring to the nearest 0.1 millimeter.

(4) *Calculations.* (i) A dose-response curve shall be obtained by the manufacturer using the U.S. Reference preparations or an in-house reference system.

(ii) Following transformation of the U.S. Reference and the in-house reference dose-response curves to a log-linear form, the in-house reference reagents are satisfactory if the correlation coefficient (r) of each is equal to or greater than 0.90, and the slopes are not significantly different at the 95-percent confidence limits.

(iii) The concentration of antigen E shall be determined by the manufacturer by calculation from the formula of the dose-response line of the reference preparations in log-linear form, as described in the written information included with the U.S. Reference preparation for antigen E.

(5) *Requirements.* (i) The assayed value of the U.S. Reference for antigen E shall be within ±25 percent of the labeled value.

(ii) The claimed antigen E content of the lot of short ragweed pollen extract being assayed by the manufacturer shall be the value obtained from the mean of the analyses from all valid tests performed and shall be no less than 135 units per milliliter for an extract with a W/V ratio of 1:10 or 67.5 units per milliliter for an extract with a W/V ratio of 1:20.

(iii) The claimed antigen E content of a lot of extract prepared from equal parts of giant and short ragweed pollen shall be the value obtained from the mean of the analyses of all valid tests performed and shall be no less than 67.5 units per milliliter.

(iv) When the lot of extract is assayed at the Bureau of Biologics, the antigen E value shall be within ±25 percent of the claimed value.

(6) *Alternative method.* If a lot of extract is prepared by a procedure that does not permit measurement of the antigen E content by the potency test described in this paragraph, a manufacturer may use an alternative method that measures the active component(s) in the product if the Director, Bureau of Biologics has approved such an alternative method, through an approved amendment of the product license.

(b) *Labeling.* In addition to the applicable labeling provisions of §§ 610.60, 610.61, and 610.62 of this chapter, the following information is required on short ragweed pollen extract, its dilutions, and any mixed extract that included short ragweed pollen extract as a component:

(1) *Final container label and package label.* The final container label and package label shall include the following:

(i) The antigen E content at the time of assay or, if an alternate procedure has been approved under paragraph (a)(6) of this section, the equivalent potency content, expressed as units per milliliter or per vial or when reconsitituted in accordance with instructions. The statement of the antigen E content shall appear more prominently than the information on W/V or PNU required by paragraph (b)(1)(ii) of this section.

(ii) The dry weight (in grams) of pollen in relation to volume (in milliliters) of extracting fluid designation expressed as a weight-to-volume (W/V) ratio, or as the protein nitrogen unit value (PNU).

(iii) A reference to the enclosed package insert.

(2) *Package insert.* The package insert shall include the following:

(i) Information concerning the proper use of the product and its antigen E content as indicated, in the diagnosis and treatment of allergy.

(ii) Information concerning possible systemic reactions and their management.

(iii) A statement recommending that extracts be maintained at a temperature of 2° to 8° C at all times, even during use.

(iv) A statement that the antigen E content of products containing short ragweed pollen extract at a concentration that is more dilute than a W/V ratio of 1:20 may be obtained by calculation from the antigen E assay value of a more concentrated extract that was analyzed, officially released by the Director, Bureau of Biologics, and subsequently diluted.

(v) Information concerning the stability of antigen E for the form of the labeled product, including information on the decline potency of antigen E during the dating period.

(c) *Samples and protocols; official release.* (1) For each lot of extract, the following material shall be submitted by the manufacturer to the Director, Bureau of Biologics, Food and Drug Administration, Building 29A, 8800 Rockville Pike, Bethesda, MD 20205.

(i) *Samples.* A 20-milliliter sample representative of each lot of short ragweed pollen extract manufactured at a W/V ratio of 1:10 or 1:20 or, at a W/V ratio of 1:20 for extracts that are made from equal parts of giant and short ragweed pollen.

(ii) *Protocols.* A protocol consisting of the dates and results of all tests required by the Director, Bureau of Biologics.

(2) The product shall not be issued by the manufacturer until written notification of official release is received from the Director, Bureau of Biologics.

Effective date. This regulation becomes effective January 27, 1982. On or after January 27, 1982 no person may initially introduce or initially deliver for introduction into interstate commerce any licensed lot of short ragweed pollen extract or extract prepared from equal parts of giant and short ragweed pollen unless the lot has been officially released by the Director, Bureau of Biologics. In addition, on or after January 27, 1982 each licensed lot of short ragweed pollen extract or mixed extract that contains short ragweed pollen extract as a component is required to include the appropriate antigen E labeling.

(Secs. 502, 701, 52 Stat. 1050–1051 as amended, 1055–1056 as amended (21 U.S.C. 352, 371); (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)))

Dated: July 2, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-22365 Filed 7-30-81; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners; Correction

AGENCY: United States Parole Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission is correcting a clerical error to its final rule regarding parole review hearings that focus on prison conduct published in the Federal Register on January 16, 1979 at 44 FR 3407.

EFFECTIVE DATE: July 31, 1981.

FOR FURTHER INFORMATION CONTACT: Toby Slawsky (301) 492–5959.

SUPPLEMENTARY INFORMATION: In FR Doc. 79–1346 appearing at page 3407 in the issue of Tuesday, January 16, 1979 the amendment to 28 CFR 2.14(a) clarifying procedures for consideration of disciplinary infractions at interim review hearings was incorrectly designated as 2.14(a)(3)(iii) and (iv). The section is corrected to read 2.14(a)(2)(iii) and (iv). Section 2.14(a)(2) was further amended on September 24, 1979 at 44 FR 55004–5. For clarification, 28 CFR 2.14 is reprinted as corrected in its entirety:

§ 2.14 Subsequent proceedings.

(a) *Interim proceedings.* The purpose of an interim hearing required by 18 U.S.C. 4208(h) shall be to consider any significant developments or changes in the prisoner's status that may have occurred subsequent to the initial hearing.

(1) Notwithstanding a previously ordered presumptive release date or ten-year reconsideration hearing, interim hearings shall be conducted by an examiner panel pursuant to the procedures of § 2.13(b), (c), (e), and (f) at the following intervals from the date of the last hearing:

(i) In the case of a prisoner with a maximum term or terms of less than seven years, every eighteen months (until released);

(ii) In the case of a prisoner with a maximum term or terms of seven years or more, every twenty-four months (until released). However, in the case of a prisoner with an unsatisfied minimum term, the first interim hearing shall be deferred until the docket of hearings immediately preceding the month of parole eligibility.

(2) Following an interim hearing, the Commission may:

(i) Order no change in the previous decision;

(ii) Advance a presumptive release date, or the date of a ten-year reconsideration hearing. However, it shall be the policy of the Commission that once set, a presumptive release date or the date of a ten-year reconsideration hearing shall be advanced only (1) for superior program achievement under the provisions of § 2.60; or (2) for other clearly exceptional circumstances.

(iii) Retard or rescind a presumptive parole date for reason of disciplinary infractions. In a case in which disciplinary infractions have occurred, the interim hearing shall be conducted in accordance with the procedures of § 2.34(c-g). (Prior to each interim hearing, prisoners shall be notified on the progress report furnished by the Federal Prison System that any finding of misconduct by an Institutional Disciplinary Committee since the previous hearing will be considered for possible action under this subsection);

(iv) If a presumptive date falls within six months after the date of an interim hearing, the Commission may treat the interim hearing as a prerelease review in lieu of the record review required by paragraph (b) of this section.

(b) *Pre-Release reviews.* The purpose of a prerelease review shall be to determine whether the conditions of a presumptive release date by parole have been satisfied.

(1) At least sixty days prior to a presumptive parole date, the case shall be reviewed on the record, including a current institutional progress report.

(2) Following review, the Regional Commissioner may:

(i) Approve the parole date;

(ii) Advance or retard the parole date for purpose of release planning as provided by § 2.28(e);

(iii) Retard the parole date or commence rescission proceedings as provided by § 2.34;

(iv) Advance the parole date for superior program achievement under the provisions of § 2.60.

(3) A pre-release review pursuant to this section shall not be required if an in-person hearing has been held within six months of the parole date.

(c) *Ten-year reconsideration hearings.* A ten-year reconsideration hearing shall be a full reassessment of the case pursuant to the procedures at § 2.13.

(1) A ten-year reconsideration hearing shall be ordered following initial hearing in any case in which a release date is not set.

(2) Following a ten-year reconsideration hearing, the

Commission may take any one of the actions authorized by § 2.12(b).

Dated: July 24, 1981.

Benjamin J. Malcolm,

Acting Chairman, U.S. Parole Commission.

[FR Doc. 81-22332 Filed 7-30-81; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Noise Exposure; Hearing Conservation Amendment; Deferral of Effective Date

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; deferral of effective date.

SUMMARY: On January 16, 1981 (46 FR 4078), OSHA published an amendment to its standard for occupational noise exposure (29 CFR 1910.95). The amendment set forth specific requirements for hearing conservation programs including monitoring of employee exposure, audiometric testing and the use of hearing protectors. The amendment was to become effective on April 15, 1981, with various provisions being phased in over the next two years.

Following the publication of the amendment, the Agency received numerous requests for interpretation, petitions for administrative reconsideration of various provisions of the amendment, and petitions for administrative stay. The Agency was forced to defer the effective date of the amendment twice (see 46 FR 21365, 4/10/81; 46 FR, 28845, 5/29/81) in order to review and analyze the complex issues raised in the various petitions and comments which had been received since the amendment's promulgation in January. To date substantial progress has been made toward resolving the various issues raised by the above-described petitions and a Regulatory Impact Analysis consistent with the requirements of Executive Order 12291 (see 46 FR 13193, 2/17/81) has been prepared. The documents which have been prepared on this matter have been submitted to the Office of Management and Budget for review. To give OMB the 30 days provided in E.O. 12291 for its review, OSHA is deferring the effective date of the amendment until August 22, 1981. The need for internal governmental clearance of the recommended resolution of the important issues raised by the petitions constitutes good cause for the deferral of the effective date. Due to the extememly short deferral period, notice and opportunity to comment on the deferral is impractical and unnecessary within the meaning of 5 U.S.C. 553 and 29 U.S.C. 655(b). Any subsequent stays of portions of the standard while certain provisions are reopened will be subject to notice and comment.

EFFECTIVE DATE: The effective date of 29 CFR 1910.95(c)–(s) and Appendixes A–I is deferred until August 22, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Room N–3641, Office of Public Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone (202) 523–8151.

Signed at Washington, D.C. this 29th day of July 1981.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 81-22300 Filed 7-30-81; 8:45 am]

BILLING CODE 4510-26-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Amendment of Procedural Rule

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Amendment of Commission rule.

SUMMARY: The Commission is adopting an interim rule to change certain procedural requirements regarding the Secretary's application to the Commission for reinstatement of miners in temporary reinstatement proceedings. The interim rule substitutes a "frivolously brought" standard of review for the former "arbitrary or capricious" standard. The amendment is intended to reduce the chance of erroneous temporary reinstatement with respect to a Commission administrative law judge's initial review of the Secretary's application and to provide those persons against whom an order of temporary reinstatement is issued with an opportunity, at the temporary reinstatement stage, to establish that the discrimimation complaint filed with the Secretary was frivolously brought. The Commission will accept comments.

DATES: Effective date: July 30, 1981. The Commission will accept public comments received on or before September 28, 1981.

ADDRESS: Comments should be submitted to the Federal Mine Safety and Health Review Commission, 1730 K. St. NW., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Dennis D. Clark, General Counsel, or Carl Charneski, Attorney, Office of the General Counsel at (202) 653–5610.

SUPPLEMENTARY INFORMATION: Section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(c)(2) (Supp. III 1979), in part provides that miners, applicants for employment and reprentatives of miners may file complaints of discrimination with the Secretary if they believe that they have been discharged, interfered with or discriminated against in violation of the Mine Act. Section 105(c)(2) also in part provides that within 15 days of receipt of the complaint the Secretary is to commence an investigation, and, "if the Secretary finds that such complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the immediate reinstatement of the miner pending final order on the complaint." Commission Rule 44, 29 CFR 2700.44, titled "Temporary reinstatement proceedings", implements the temporary reinstatement provisions of section 105(c)(2) by setting forth the procedure for obtaining a Commission order of temporary reinstatement. Paragraph (a) of Commission Rule 44 states that the Secretary is to file with the Commission an application for reinstatement that contains the Secretary's finding that the complaint of discrimination, discharge or interference was "not frivolously brought" and the basis for such finding. Paragraph (a) further states that the Secretary's application is to be immediately examined by a Commission administrative law judge and that judge is to immediately issue an order of temporary reinstatement unless he determines from the face of the application that the Secretary's finding that the complaint was not frivolously brought was "arbitrarily or capriciously made." If the person against whom the relief of temporary reinstatement is granted requests a hearing on the order, paragraph (a) requires that the judge hold a hearing within 5 days after the request is filed in order to determine whether the Secretary acted "arbitrarily or capricioulsy" in finding that the complaint was not frivolously brought.

In *Kentucky Carbon Corporation*, KENT 80–145–D, decided July 23, 1981, we held that Commission Rule 44's "arbitrary or capricious" scope of review, as it relates to the hearing on the temporary reinstatement order, does not satisfy the minimum requirements of the Fifth Amendment's due process clause.

We concluded in *Kentucky Carbon* that the "arbitrary or capricious" standard provides for too narrow a hearing on the order of temporary reinstatement and thus, that it does not afford the mine operator a fair opportunity to be heard. Therefore, consistent with our decision in *Kentucky Carbon*, the Commission amends Commission Rule 44, 29 CFR 2700.44, by revoking paragraph (a) and by adopting, on an interim basis, new paragraph (a). The amended interim rule substitutes a "frivolously brought" standard of review for the former "arbitrary or capricious" standard with respect to a Commission administrative law judge's initial review of the Secretary's application for temporary reinstatement and accompanying documents and, when an order of temporary reinstatement is issued by a judge, with respect to the hearing on the reinstatement order if one is requested under paragraph (a). Thus, under the amended interim rule, a Commission judge is to immediately issue an order of temporary reinstatement upon application of the Secretary, if the judge determines that the Secretary's application and accompanying documents appear to support his finding that the miner's complaint of discrimination, discharge or interference was not "frivolously brought." Also, if the judge issues a reinstatement order and the person against whom the order is issued requests a hearing under paragraph (a), the judge is to hold a hearing within 5 days after the request is filed in order to give the operator an opportunity to establish that the complaint of discrimination, discharge or interference was "frivolously brought."

Inasmuch as Commission Rule 44(a), as amended, is a procedural rather than a substantive rule, and inasmuch as this action is intended to provide guidance involving temporary reinstatement procedures, guidance necessitated by our decision in *Kentucky Carbon*, public comment was not invited and no notice of proposed rulemaking was published. However, because Rule 44(a), as amended, is adopted on an interim basis only, public comment is invited, although not required, in order to assist the Commission in its deliberations regarding the adoption of a permanent rule. Therefore, the Commission invites and will accept public comment received on or before September 28, 1981.

Accordingly, Commission Rule 44(a), 29 CFR 2700.44(a), is revised on an interim basis to read as follows:

§2700.44 Temporary reinstatement proceedings.

(a) *Contents of application; procedure; hearing.* An application for temporary reinstatement shall state the Secretary's finding that the miner's complaint of discrimination, discharge or interference was not frivolously brought and shall be accompanied by a copy of the miner's complaint, an affidavit setting forth the Secretary's reasons for his finding, and proof of service upon the operator. The application and accompanying documents shall be examined upon an expedited basis, and, if it appears that the Secretary's finding is supported by the application and accompanying documents, an order of temporary reinstatement shall be immediately issued. The order shall be effective upon receipt or actual notice. If the person against whom relief is sought requests a hearing on the order, a Judge shall, within 5 days after the request is filed, hold a hearing to determine whether the miner's complaint of discrimination, discharge or inteference was frivolously brought. The judge may then dissolve, modify or continue the order.

* * * * *

(30 U.S.C. 815 and 823)

Dated: July 27, 1981.

Richard V. Backley,

Chairman.

[FR Doc. 81-22531 Filed 7-30-81; 8:45 am]

BILLING CODE 6820-12-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

29 CFR Part 2530

Rules and Regulations for Minimum Standards for Employee Benefit Plans; Suspension of Benefit Rules; Deferral of Effective Date

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Deferral of effective date of final rule.

SUMMARY: This document defers until September 1, 1981, the effective date of 29 CFR 2530.203-3, Suspension of Benefit Rules. This regulation had been due to take effect on August 1, 1981. This action is taken in order to permit further analysis of the regulation in accordance with Executive Order 12291.

DATE: The effective date of 29 CFR 2530.203-3 is deferred until September 1, 1981.

FOR FURTHER INFORMATION CONTACT: Jay S. Neuman, Office of the Solicitor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Room C-4508, 202-523-8658.

SUPPLEMENTARY INFORMATION: On January 27, 1981, the Department of Labor published in the **Federal Register** (46 FR 8894) a final regulation under section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) governing the circumstances under which it is permissible for a plan to suspend the payment of pension benefits (29 CFR 2530.203-3). As published, this regulation was due to take effect May 27, 1981.

On May 26, 1981, and June 30, 1981 the Department published documents (46 FR 28151, 33517) which announced its decision to defer the effective date of the suspension of benefits regulation initially until July 1, 1981, and then until August 1, 1981. These actions were taken in order to permit reconsideration of this regulation in accordance with Executive Order 12291, and to coordinate review by the Office of Management and Budget, as required by the Executive Order.

The Department has determined that additional time is needed to permit full consideration of the issues, and the costs and benefits involved, in light of concerns raised in comments the Department has recieved on the final rule. Accordingly, the Department has decided to defer the effective date of the suspension of benefits regulation until September 1, 1981.

For these reasons, and because this regulation is scheduled to become effective very shortly, the Department finds, pursuant to the Administrative Procedure Act (5 U.S.C. 553(b)), that additional notice and public procedure on this change of effective date would be impracticable, unnecessary and contrary to the public interest.

Accordingly, pursuant to the authority set forth in sections 203(a)(3)(B) and 505 of ERISA, the effective date of 29 CFR 2530.203-3 is hereby deferred until September 1, 1981.

Signed at Washington, D.C., this 30th day of July 1981.

Donald L. Dotson,

Assistant Secretary, Labor-Management Services Administration.

[FR Doc. 81-22584 Filed 7-30-81; 12:00 pm]

BILLING CODE 4510-29-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 304

Cost of Living Adjustment for Compulsory Royalty Rates Paid by Non-Commercial Broadcasting

AGENCY: Copyright Royalty Tribunal.
ACTION: Final rule.

SUMMARY: The Copyright Royalty Tribunal announces that the cost of living adjustment to be applied to the compulsory royalty rates paid by non-commercial broadcasting for the use of certain copyrighted works is 9.8 percent.

EFFECTIVE DATE: September 1, 1981.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brennan, Acting Chairman, Copyright Royalty Tribunal, 202–653–5175.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 8, 1978 (43 FR 25068) the Copyright Royalty Tribunal published a final rule announcing the terms and rates of royalty payments to be paid by non-commercial broadcasting for the use of certain copyrighted works. In that rule § 304.10 stated that:

(a) On August 1, 1979 the CRT shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all urban consumers, all items) from the first Index published subsequent to the effective date of this schedule of royalty payments to the last Index published prior to August 1, 1979.

On each August 1 thereafter the CRT shall publish a notice of the change in the cost of living during the period from the first Index published subsequent to the previous notice, to the last Index published prior to August 1 of that year.

(b) On the same date of the notices published pursuant to paragraph (a), the CRT shall publish in the **Federal Register** a revised schedule of rates which shall adjust those royalty amounts established in dollar amounts according to the change in the cost of living determined as provided in paragraph (a). Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule of rates shall become effective thirty days after publication in the **Federal Register.**

Accordingly it is announced that the change in the cost of living as determined by the Consumer Price Index (all urban consumers, all items) from the Index published June 23, 1980 to the last Index published prior to August 1, 1981, is 9.8%. (Last year's May Index was published June 23, 1980 and was 244.9; and this year's May Index was published June 23, 1981 and was 269.0).

The rates published in the **Federal Register** on August 1, 1980 (45 FR 51197) are revised as shown below.

37 CFR Part 304 is amended as follows:

§ 304.3 [Amended]

1. Section 304.3(a) is amended by removing the figure "$1,584,440" and inserting "$1,739,715."

2. Section 304.3(d) is amended by removing the figure "$5,070" and inserting "$5,567."

§ 304.4 [Amended]

3. Section 304.4(a) is amended by removing the paragraph containing dollar amounts and inserting the following:

* * * * *

(a) * * *

For the performance of such a work in a feature presentation of PBS	$139
For the performance of such a work as background or theme music in a PBS program	35
For the performance of such a work in a feature presentation of NPR	14
For the performance of such a work as background or theme music in a NPR program	3
For the performance of such a work in a feature presentation of a station of PBS	49
For the performance of such a work as background or theme music in a program of a station of PBS	14
For the performance of such a work in a feature presentation of a station of NPR	8
For the performance of such a work as background or theme music in a program of a station of NPR	2

* * * * *

§ 304.5 [Amended]

4. Section 304.5(c) is amended by deleting the paragraphs containing dollar amounts and inserting the following:

* * * * *

(c) * * *

For all such compositions in the repertory of ASCAP, annually	$125
For all such compositions in the repertory of BMI, annually	125
For all such compositions in the repertory of SESAC, annually	27
For the performance of any other such composition	1

* * * * *

§ 304.6 [Amended]

5a. Section 304.6(c)(1) is amended by removing the paragraphs containing dollar amounts and inserting the following:

* * * * *

(c) * * *
(1) * * *

For all such compositions in the repertory of ASCAP, annually	$251
For all such compositions in the repertory of BMI, annually	251
For all such compositions in the repertory of SESAC, annually	56
For the performance of any other such compositions	1

* * * * *

6. Section 304.6(c)(2) is amended by removing the paragraphs containing dollar amounts and inserting the following:

* * * * *

(c) * * *
(1) * * *

For all such compositions in the repertory of ASCAP, annually	$628
For all such compositions in the repertory of BMI, annually	628
For all such compositions in the repertory of SESAC, annually	139
For the performance of any other such compositions	1

* * * * *

6. In § 304.7(b)(1)–(4) the paragraphs containing the dollar amounts are removed and the following inserted in lieu:

§ 304.7 Recording rights, rates and terms.

* * * * *

(b) Royalty rate.
(1) * * *

Feature	$69
Feature (concert) (per minute)	21
Background	35
Theme: Single program or first series program	35
Other series program	14

(2) * * *

Feature	14
Feature (concert) (per ½ hour)	21
Background and Theme	3

(3) * * *

Feature	27
Feature (concert) (per minute)	8
Background	14
Theme: Single program or first series program	14
Other series program	8

(4) * * *

Feature	8
Feature (concert) (per ½ hour)	10
Background and Theme	2

* * * * *

7. Section 304.8(b)(1) is revised to read as follows:

§ 304.8 Terms and rates or royalty payments for the use of published pictorial, graphic, and sculptural works.

* * * * *

(b) *Royalty rate.* (1) The following schedule of rates shall apply to the use or works within the scope of this section:

For such uses in a PBS distributed program:	
For a feature display of a work	$42
For a background and montage display	21
For use of a work for program identification or for thematic use	83
For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective or whether the reproduced work of fine art is copyrighted so as to be subject also to payment or a display fee under the terms of this schedule	27
For such uses in other than PBS distributed programs:	
For a featured display of work	27
For background and montage display	14

For use of a work for program identification or for thematic use	56
For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule	14

* * * * *

Thomas C. Brennan,

Acting Chairman, Copyright Royalty Tribunal.

[FR Doc. 81-22217 Filed 7-30-81; 8:45 am]

BILLING CODE 1410-06-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 80-562; RM-3603]

FM Broadcast Station in Bath, and Hammondsport, New York; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns FM Channel 276A to Bath, New York, as that community's first FM channel, at the request of Richard Snavely.

DATE: Effective September 22, 1981.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: July 21, 1981.

Released: July 24, 1981.

By the Chief, Policy and Rules Division:

In the matter of an amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Bath, and Hammondsport, New York), BC Docket No. 80-562, RM-3603, report and order.

1. Before the Commission is a *Notice of Proposed Rule Making*, 45 FR 64991, published October 1, 1980, proposing the assignment of FM Channel 276A to Bath, New York, as that community's first FM channel, at the request of Richard Snavely ("petitioner"). Opposing comments were filed by Genkar, Inc. ("Genkar"), licensee of Station WVIN(AM), in Bath and WVIN(FM), Hammondsport, New York. Petitioner filed a response in which he reaffirmed his intent to file for the channel, if assigned. In order to comply with the Commission's minimum mileage separation requirements, a site restriction of 10 kilometers (6.3 miles) west of Bath, is required.

2. Bath (population 6,053) [1], seat of Steuben County (population 99,546) is located 140 kilometers (87 miles) southeast of Buffalo, New York. Bath is served locally by daytime-only AM Station WVIN.

3. Genkar, in the opposition, indicates that it has filed to move its Hammondsport FM station to Bath where its channel is already assigned, thus negating the basis for assigning Channel 276A to Bath. Genkar claims that the justification for the instant proposal is the first local FM service it would offer.

4. Petitioner responds that the provision of a first local FM service to Bath was not the only justification for the proposal. Rather, Bath is deserving of a choice of local FM stations in accordance with the Commission's priorities for distributing available FM channels.[2] Also, this assignment is particularly efficient according to petitioner due to its minimal preclusive impact. Rather, petitioner urges us to treat Genkar's comments as an attempt to avoid competition from a new station.

5. We believe the public interest would be served by the assignment of FM Channel 276A to Bath, New York. An interest has been shown for its use and such an assignment would provide the community with an FM station which could provide additional aural service greatly benefiting the citizens of the community. While the assignment would not necessarily provide a first FM station at Bath, the need for two FM stations has been sufficiently demonstrated.

6. We shall not reassign Channel 252A from Bath to Hammondsport as previously proposed since Genkar has filed to move its station to Bath.

7. Authority of the adoption of the amendment herein is contained in sections 4(i), 5(d)(1), 303(g) and (r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

8. Accordingly, IT IS ORDERED, That effective September 22, 1981, § 73.202(b) of the Commission's Rules, the FM Table of Assignments, IS AMENDED with regard to the following communities:

City	Channel No.
Bath, New York	252A, 276A

9. It is further ordered, That the proceeding is terminated.

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

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-22376 Filed 7-30-81; 8:45 am]

BILLING CODE 6712-01-M

[1] Population data are taken from the 1970 U.S. Census.

[2] Citing *Third Report, Memorandum Opinion and Order*, 40 F.C.C. 747 (1963).

47 CFR Part 73

[BC Docket No. 80-279; RM-3484]

FM Broadcast Station in Belfast, Maine; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Class B FM Channel 284 to Belfast, Maine, in response to a petition filed by Sico Communications, Inc. The assignment could provide a first local FM service to Belfast and first and second FM and nighttime aural services to the surrounding area.

DATE: Effective September 22, 1981.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: July 20, 1981.

Released: July 24, 1981.

By the Chief, Policy and Rules Division:

In the matter of an amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Belfast, Maine), BC Docket No. 80-279 RM-3484, report and order, (Proceeding Terminated).

1. The Commission has under consideration a *Notice of Proposed Rule Making*, 45 FR 42749, published June 25, 1980, proposing the assignment of Class B FM Channel 284 to Belfast, Maine, as its first FM assignment. The *Notice* was issued in response to a petition filed by Sico Communications, Inc. ("petitioner"). Supporting comments were filed by the petitioner and by Seth Broadcasting Corporation,[1] both stating

[1] Licensee of fulltime AM Station WBME, Belfast, Maine.

their intent to apply for the channel, if assigned.

2. Belfast (pop. 5,957),[2] seat of Waldo County (pop. 23,328) is located approximately 64 kilometers (40 miles) east of Augusta, Maine. It is served locally by fulltime AM Station WBME.

3. Petitioner incorporated the information contained in the *Notice* which demonstrated the need for a first FM assignment. Sico claims that a wide area coverage Class B facility would provide a first FM service to 4,185 persons in a 317 square kilometer (124 square mile) area, a second FM service to 6,632 persons in a 386 square kilometer (151 square mile) area, and first nighttime aural service to 4,115 persons in a 263 square kilometer (103 square mile) area, and a second nighttime aural service to 6,128 persons in a 371 square kilometer (145 square mile) area. The figures are based on a proposal to locate the transmitter site approximately 32 kilometers (20 miles) east of Belfast, operating with 50 kW power at 500 feet. Petitioner's *Roanoke Rapids* study failed to consider the assignment of Channel 273 at Camden, Maine, which would substantially reduce the FM and nighttime aural service figures. The *Notice* also stated that the assignment of Channel 284 to Belfast would cause preclusion to twenty-two communities with populations greater than 1,000. An updated study submitted by the petitioner indicates that only six communities with no AM or FM service will be precluded by the assignment. Petitioner submitted a listing of alternate channels available to the communities precluded by the Class B assignment, as requested in the *Notice*.[3]

4. Canadian concurrence has been obtained for the assignment of Channel 284 to Belfast, Maine.

5. We have given careful consideration to the proposal and believe that it would be in the public interest to assign Channel 284 to Belfast, Maine. Although a community of this size is not normally assigned a Class B channel, it appears from the information submitted that the proposed assignment would provide significant first and second service to a substantial population. Since alternate channels are available to the precluded areas, we believe the preclusion impact is insignificant. Thus, in view of the insignificant preclusion impact by virtue of the availability of alternate channels and the apparent need for a wide coverage area station, we find the proposal justified.

6. In view of the foregoing and pursuant to the authority contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules, it is ordered, That effective September 22, 1981, the FM Table of assignments, Section 73.202(b) of the Commission's Rules, is amended, with regard to Belfast, Maine, as follows:

City	Channel No.
Belfast, Maine	284

7. It is further ordered, That this proceeding is terminated.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-22377 Filed 7-30-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 80-607; RM-3641]

TV Broadcast Station in Madisonville, Owensboro, and Princeton, Kentucky; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein reassigns UHF Television Channel 19 from Owensboro to Madisonville, Kentucky, and substitutes Channel 48 at Owensboro, in response to a request by Life Anew Ministeries. The assignment would provide Madisonville with its first commercial UHF television service. It also dismisses a petition filed by Apple Media Associates to assign Channel 19 to Princeton, Kentucky, for failure of that petitioner to make the requisite showing of continuing interest in the proposed channel allocation.

DATE: Effective September 23, 1981.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: July 9, 1981.

Released: July 23, 1981.

In the matter of amendment of § 73.606(b), Table of Assignments, television broadcast stations. (Madisonville, Owensboro, and Princeton, Kentucky); report and order (proceeding terminated).

1. Before the Commission is a *Notice of Proposed Rule Making*, 45 FR 69501, published October 21, 1980, proposing two alternate UHF television assignment plans for the above-captioned communities, in response to petitions filed by Life Anew Ministries ("LAM") and Apple Media Associates ("AMA").[1]

2. LAM proposed that the Commission reassign UHF television Channel 19 from Owensboro to Madisonville, Kentucky, as that community's first commercial television assignment, and to substitute UHF television Channel 48 at Owensboro.

3. The Commission set forth the proposals in the *Notice* as alternate Plans I and II. Specifically, Plan I proposes the reassignment of UHF TV Channel 19 from Owensboro to Madisonville, Kentucky, and the substitution of UHF TV Channel 48 at Owensboro (as proposed by LAM); and assignment of UHF TV Channel 54 to Princeton, Kentucky. Plan II proposes the assignment of Channel 57 to Madisonville; reassignment of UHF TV Channel 19 from Owensboro to Princeton, Ky. (as proposed by AMA); and substitution of UHF TV Channel 48 at Owensboro. Comments were filed by LAM in which it reaffirmed its intent to apply for Channel 19 if allocated to Madisonville (Plan I), and in which it responded to the AMA proposal.

4. LAM reiterates in its comments that its request for Channel 19 is based principally on the fact that it has equipment available for that channel, but which is not compatible with the higher channel assignment available for Madisonville.

5. Conversely, AMA failed to file any comments (beyond its initial statement of opposition to the LAM proposal), concerning the proposals as set forth in the *Notice*. According to Commission policy, a showing of continuing interest

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[2] Population figures are taken from the 1970 U.S. Census.

[3] Alternate channels for the precluded areas are: Class B Channels 223, 258, 259, 260, 263 and 267; and Class A Channels 237A, 244A, 249A, 257A, 261A, 269A and 280A.

[1] AMA's petition is more properly described as an opposition to the LAM proposal, and a request to assign UHF TV Channel 19 to Princeton rather than Madisonville. The AMA petition made no attempt to demonstrate a public need for the assignment, nor did it present any reason why it should be preferred over LAM. However, consistent with the sanctions of Section 307(b), the Commission elected to proceed with both proposals, and invited comments thereon.

is required before a channel will be assigned to a community. Since AMA has failed to make such a showing for the Princeton assignment, and the period for doing so has expired without any other party having expressed an interest, we have not given further consideration to that proposal.

6. Madisonville (population 15,332),[2] seat of Hopkins County (population 38,167), is located approximately 180 kilometers (115 miles) southwest of Louisville, Kentucky. Owensboro (population 50,329), seat of Davies County (population 79,486), is located approximately 60 kilometers (37 miles) northeast of Madisonville.

7. Madisonville is currently served locally by television broadcast Station WKMA (UHF TV Channel 35), a reserved noncommercial educational television channel. It has no other channel assigned to it. In its supporting comments, petitioner asserts that the proposed assignment would provide the community with its first commercial television service.

8. The Commission believes that the public interest would be served by adoption of Plan I, as set forth in our *Notice*, and as modified herein to delete the Princeton proposal. Petitioner, LAM, has shown that there is an apparent need for a first local commercial television service to the community of Madisonville, and the assignment can be made in compliance with the minimum distance separation requirements of Section 73.610 of the Commission's Rules.

9. Accordingly, pursuant to authority contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules, it is ordered, That effective September 23, 1981, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Madisonville, Kentucky	19-, *35-
Owensboro, Kentucky	31-, 48

10. It is further ordered, That this proceeding is terminated.

11. For further information concerning the above, contact Mark N. Lipp Broadcast Bureau, (202) 632-7792.

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

[2] All population data are taken from the 1970 U.S. Census.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-22380 Filed 7-30-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket Nos. 79-155; RM-3261, RM-3469, RM-3560, RM-3907]

FM Broadcast Station in Mountain Home and Marshall, Arkansas; Thayer and Birch Tree,[1] Missouri; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Class C FM Channel 282 to Marshall, Arkansas, as that community's first FM assignment, at the request of Zero Broadcasting, Inc. This action also substitutes Channel 257A for Channel 296A at Thayer, Missouri, and assigns Channel 296A to Birch Tree, Missouri, as that community's first FM assignment, at the request of Jack G. Hunt. A Commission proposal to assign Channels 282 and 298 to Mountain Home, Arkansas, is not adopted.

DATE: Effective September 22, 1981.

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

FOR FURTHER INFORMATION CONTACT: Steven A. Bookshester, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: July 20, 1981.

Released: July 24, 1981.

In the matter of amendment of § 73.202(b), Table of Assignments, FM broadcast stations (Mountain Home and Marshall, Arkansas; Thayer and Birch Tree,[1] Missouri); second report and order (proceeding terminated).

1. Presently before the Commission is the *Further Notice of Proposed Rule Making and Order to Show Cause* in this proceeding, 46 FR 15298, published March 5, 1981. In that document, the Commission proposed alternative assignment plans for Mountain Home and Marshall, Arkansas, and a channel substitution at Thayer, Missouri. Comments have been filed by Mountain Valley Broadcasters, Inc. ("Mountain Valley"). B&M Communications, Inc. ("B&M"), Zero Broadcasting, Inc. ("Zero"), and Mountain Home Broadcasting Corp. ("Mountain Home Broadcasting"). A counterproposal was submitted by Jack G. Hunt [2] ("Hunt"). Reply comments were filed by Mountain Valley, B&M, Zero, and Hunt.

Background

2. In the initial *Notice of Proposed Rule Making* in this proceeding, 44 FR 37518, published June 27, 1979, the Commission proposed the assignment of Channel 288A to Mountain Home, in response to a petition filed by Tri-Rivers Broadcasting Company, Inc. ("Tri-Rivers").[3] Mountain Valley filed a counterproposal requesting the assignment to Mountain Home of Class C Channel 282. The Commission granted Tri-Rivers' request for the assignment of Channel 288A and denied Mountain Valley's counterproposal, noting that the Channel 282 assignment requested by Mountain Valley would cause significant preclusion, and, further, that an inadequate *Roanoke Rapids* (9 F.C.C. 2d 672) (1967) showing had been submitted. We indicated that a showing of significant first and second service would be necessary for us to make an exception to our policies against intermixture and assigment of higher power channels to smaller communities.

3. Mountain Valley subsequently petitioned for reconsideration of the Commission's initial decision, submitting an engineering exhibit indicating that substantial second aural night service and second FM service would be provided by assignment of a Class C channel to Mountain Home. Suggested assignments for precluded communities were provided. The Commission found that Mountain Valley's submission did in part provide a basis for reconsideration, although it did not fully alleviate our concern regarding intermixture of the proposed Class C allocation with the existing Class A station. We proposed to resolve this problem, however, by assigning Class C Channel 298 to Mountain Home in addition to the requested Channel 282, modifying the existing station's license to specify Channel 282, and making Channel 298 available for other applicants. Channels 252A and 288A would be deleted. Use of Channel 282 by the present licensee, KTLO-FM, would be necessary so that the station would not be required to change transmitter sites. KTLO-FM's use of Channel 298 would have necessitated a site change due to the site restrictions needed in

[1] This community is being added to this proceeding.

[2] Public Notice of the filing of the counterproposal was given on June 4, 1981, Report No. 1290.

[3] The community is presently served by Stations KTLO(AM) and KTLO-FM (Channel 252A), licensed to Mountain Home Broadcasting.

order to use that frequency at Mountain Home.[4]

4. In response to the initial *Notice*, Marshall Broadcasting Co. submitted a letter opposing assignment of Channel 282 to Mountain Home and indicating its interest in the assignment of that channel to Marshall, located 52 kilometers (32 miles) away. Subsequently, Zero formally petitioned for such an assignment. That proposal was received too late to be considered in relation to the initial *Notice*. The Zero proposal was, however, appropriately considered in the *Further Notice*. Under the alternative plans set forth in the *Further Notice*, Channel 288A would be assigned to Marshall if deleted from Mountain Home as a result of the substitutions of Channel 282 and 298 for the present assignments there. In the alternative, we proposed assigning Channel 282 to Marshall. We requested that Zero submit a corrected *Roanoke Rapids* showing if it wished to pursue the Channel 282 assignment, since "reasonable facilities" standards were not utilized in its initial filing.

Comments

5. Mountain Valley, the original proponent of a Class C assignment to Mountain Home, opposes the Commission's proposal to assign Class C Channels 282 and 298 to that community. Mountain Valley argues that the site restrictions on Channel 298 will signficantly increase the cost of constructing a new station with facilities similar to those it had contemplated when it requested assignment of Channel 282. It states that the area in which the site would have to be located "is characterized by homes located along lake shores and land is, accordingly, quite expensive." Additionally, a 600-foot tower would be required, rather than the 300-foot tower contemplated for the Channel 282 site, necessitating the use of approximately 14 rather than three acres to guy the tower. Further, Mountain Valley comments, it has applied for the Channel 288A assignment, the "A" list cut-off date has passed, and the inuguration of service to the community will be hastened if the applications on file are allowed to go through the administrative process.

6. B&M, which states that it is the successor in interest to Tri-Rivers, opposes the assignment of two Class C channels to Mountain Home. B&M argues that Mountain Home's population does not justify the assignment, that the terrain and population dispersion in the area are such that the additional service provided by two Class C's would not be justified by the expense, that the assignment will result in significant preclusion, that the Channel 298 transmitter site required would make costs for a new operator prohibitive or unjustifiably expensive, and that the expense of compensating KTLO–FM for its channel change would be difficult for new broadcast operators to bear and would not be in the public interest, although, if the Commission should decide otherwise, B&M would be willing to provide such reimbursement. B&M, which has applied for Channel 288A, proposes that the Commission deny Mountain Valley's petition for reconsideration, reinstate the assignment of Channel 288A, leave other frequency allocations in the area unaffected, proceed to consider applications meeting the cut-off date for Channel 288A, and grant authority to operate on that channel.[5]

7. Mountain Home Broadcasting, the licensee of the existing KTLO–FM, states that it supports modification of its license to specify operation on Channel 282. Zero argues that assignment of Channel 288A to Marshall is inappropriate because the site restriction requiring a transmitter location north of the city would result in significant shadowing of the station's signal in areas within its primary service contour. Assignment of Channel 282 would, Zero states, allow use of a location south of the city and permit service to most of the areas which would otherwise be shadowed. Zero's new engineering study states that the Channel 282 assignment would provide a first FM service to an area of 313 square miles serving 820 persons and a second FM service to an area of 1,587 square miles encompassing 13,887 persons.

8. Hunt's counterproposal requests that Channel 296A be deleted from Thayer and reassigned to Birch Tree, Missouri, and Channel 257A substituted at Thayer, whether or not Channel 298 is assigned to Mountain Home. The change to Channel 257A at Thayer would be required by assignment of Channel 298 to Mountain Home. However, we had not proposed to reassign Channel 296A to another community. Additionally, no change would otherwise be required at Thayer if Channel 282 is assigned to Marshall. Channel 296A would be Birch Tree's first FM assignment, and would also provide a first local nighttime service. Hunt states that Birch Tree has a 1980 population of 622. Shannon County, in which Birch Tree is located, has a 1980 population of 7,885.[6] Hunt reports that there are presently no broadcast stations licensed to any community in Shannon County although he has recently been issued a construction permit for a 500-watt daytime-only AM station. Birch Tree was incorporated in 1908, according to Hunt, who also states that its major industries include logging, agriculture, and wood products manufacturing. Tourism is said to be a significant industry, as the city is surrounded by the Mark Twain National Forest and the Ozark National Scenic Riverways.

9. In its reply comments, Mountain Valley reiterates its opposition to the assignment of Class C Channels 282 and 298, arguing that the public interest would best be served by designating the pending applications for Channel 288A for hearing. B&M essentially restates the arguments in its initial comments, and also suggests that the Commission consider the Marshall and Birch Tree assignments in separate proceedings. Zero again emphasizes its view that the interests of residents of both Marshall and Mountain Home would best be served by assigning Channel 282 to Marshall and maintaining the present assignments at Mountain Home. Hunt opposes B&M's proposal that the Commission deny Mountain Valley's reconsideration petition, terminate the proceeding, and leave other area assignments unaffected. Hunt argues that the Commission has in fact already granted Mountain Valley's petition in part, and that no time would be gained by failing to carry this proceeding through to its fruition.

Conclusions

10. It is the Commission's general policy not to make new assignments to communities unless an interest in the use of such channels has been expressed. Therefore, in view of the opposition of both Mountain Valley and B&M to the assignment of Channels 282 and 298 to Mountain Home, we will not alter the present assignments of Channels 252A and 288A to that community. While we continue to be of the view that Class C stations at Mountain Home would have provided sufficient additional service to justify the assignment of such channels to that community, we are aware that the cost

[4] Assignment of Channel 298 to Mountain Home would require deletion of Channel 296A, unoccupied and unapplied for, at Thayer, Missouri. We proposed to substitute Channel 257A.

[5] Dr. Ambrose Walker, who has also filed for a construction permit for Channel 288A, did not submit comments in this proceeding.

[6] The 1970 Census reports the populations of Birch Tree and Shannon County as 573 and 7,196, respectively.

factors involved are significant and that the present assignment of such channels might well delay the introduction of any additional service. Although Mountain Home Broadcasting supported our proposal to modify its license for KTLO–FM to specify operation on Channel 282, we believe that interest was predicated on the receipt of compensation from the eventual licensee of Channel 298. Additionally, KTLO–FM would not have had to face any competing applicants for the Channel 282 assignment. In the present circumstances, we could not assign one Class C channel without opening it to all applicants, and to do so would again create intermixture.

11. While Zero's new *Roanoke Rapids* showing incorrectly fails to take into account service from KMAG, Fort Smith, and the Channel 226 assignment at Batesville, substantially reducing the amount of new service, the Commission is of the view that the assignment of Channel 282 to that community, as requested by Zero, is justified by the significant second FM service which would be provided. Additionally, the Class C assignment appears likely to overcome some of the shadowing which would occur if we utilized Channel 288A at Marshall with the required site restriction north of the community. B&M's suggestion that the Commission "deny reconsideration" and treat the Marshall and Birch Tree assignments in other proceedings is inappropirate. As Hunt correctly points out, the Commission granted reconsideration in part and reopened the proceeding when it issued its *Memorandum Opinion and Order and Further Notice*. Therefore, the Marshall and Birch Tree matters are properly before us for resolution at this time. No delay occurs by our present disposition of these matters.

12. The Commission is also of the view that a sufficient showing has been made by Hunt for the assignment of Channel 296A to Birch Tree as its first FM channel. We will, as initially proposed, substitute Channel 257A at Thayer. Use of Channel 257A at Thayer requires a site restriction of 9.3 kilometers (5.8 miles) south of that city.

13. Accordingly, it is ordered, That effective September 22, 1981, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended with respect to Marshall, Arkansas, and Thayer and Birch Tree, Missouri, as follows:

City	Channel No.
Marshall, Arkansas	282
Birch Tree, Missouri	296A
Thayer, Missouri	257A

14. It is further ordered, That this proceeding is terminated.

15. This action is taken pursuant to authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

16. For further information concerning this proceeding, contact Steven A. Bookshester, Broadcast Bureau, (202) 632–7792.

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

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-22408 Filed 7-30-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-478; RM-3563]

FM Broadcast Station in Show Low, Arizona; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns a Class C FM channel to Show Low, Arizona, in response to a petition filed by KBW Associates, Inc. The proposed station could provide a second local aural broadcast service to Show Low, and a first and second service to the rural areas.

DATE: Effective September 22, 1981.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632–7792

SUPPLEMENTARY INFORMATION:

Adopted: July 20, 1981.

Released: July 24, 1981.

In the matter of amendment of § 73.202(b), Table of Assignments, FM broadcast stations (Show Low, Arizona); report and order (proceeding terminated).

1. In response to a petition filed by KBW Associates, Inc. ("petitioner"), the Commission adopted a *Notice of Proposed Rule Making and Order to Show Cause*, 45 Fed. Reg. 61646, published September 17, 1980, which proposed the assignment of two Class C channels and the deletion of a Class A channel at Show Low, Arizona. Additionally, it proposed modifying the Class A license (Station KVWM–FM) to specify operation on one of the Class C channels. Comments supporting the proposal were filed by the petitioner. Comments were also filed by Peak Broadcasting Co., licensee of Station KVWM–FM (Channel 228A), Show Low, Arizona, opposing the modification of its license, to which petitioner responded.

2. Show Low (population 2,285),[1] in Navajo County (population 47,715), is located approximately 200 kilometers (125 miles) northeast of Phoenix. It is served locally by daytime-only AM Station KVWM, fulltime AM Station KVSL (licensed to petitioner) and FM Station KVWN–FM (Channel 228A).

3. In the *Notice* we indicated that since a Class C channel would provide first and second service to a vast and predominately rural area, we would not apply our policy which assigns Class A channels to small communities. However, since the assignment of a Class C channel would fail to promote the desirable competitive balance we seek to achieve in our policy against intermixture of classes in the same community, we proposed a second Class C assignment as a substitute for the existing Class A station to avoid the intermixture. See *Mitchell, South Dakota*, 62 F.C.C. 2d 70 (1976); and *Lake Havasu City, Arizona*, BC Docket No. 80–293, 45 FR 42725, published June 25, 1980. Because Station KVWM–FM could be affected by following the *Mitchell* precedent, it was given an opportunity to indicate whether it consented to or was opposed to the proposed change of its channel assignment in the *Order to Show Cause*.

4. Peak Broadcasting Co. in comments states that it is opposed to the propsed change of its channel from 228A to 266. It asserts that the expense involved in upgrading its station was not warranted by its potential market. However, it took no position on the other proposed Class C assignment and the resulting intermixture. In response, petitioner contends, since there is no interest by the licensee in a Class C station, Channel 266 should not be substituted for Channel 228A, and it would be unwilling to reimburse the Class A licensee for expenses in the proposed channel switch.

5. The Commission's policy against the intermixture of classes of channels recognized the unfairness of the circumstance where a Class A licensee is forced into a situation, not of its own making, of competing with a Class B/C station. As a result, we generally do not assign a Class B/C channel to a community already assigned a Class A

[1] Population figures are taken from the 1970 U.S. Census.

channel. This situation differs from that where the community already has a Class B/C station and a willing party seeks a Class A station. See *Yakima, Washington*, 42 F.C.C. 2d 548 (1978). In that situation, the existing station is not likely to be harmed by the new competition to an extent which would result in the community not gaining an additional station. However, we have been confronted in a few cases, the most prominent of which is *Fayetteville, North Carolina*, 43 FR 36104 (1979), in which we have held that the gain of a substantial first and second FM and aural service is of such value that the potential competitive harm is outweighed. We believe that the present case is such a situation. Our own study indicates that using reasonable facilities (producing a contour of approximately 35 miles) almost the entire service area of the proposed station consists of unserved areas. The only services [2] which overlap do so only over a very small portion of the outer extent of the contour. This vast area without any broadcast service appears unlikely to receive new stations in the near future since there are very few communities appearing on the maps we have analyzed in which an interest in a station would be expected. On this basis alone we believe the intermixture result is outweighted.

6. When we also consider the fact that intermixture was not a necessary result in this case since other Class C channels are available for use by Station KVWM-FM, we find that the creation of intermixture is, in effect, of the Show Low station's own making. We have given Station KVWM-FM the opportunity to upgrade to which the station has refused while not indicating an objection to the intermixture result. Under the circumstances, we find that the request to assign Channel 243 to Show Low is granted while the assignment of Channel 266 in lieu of Channel 228A and modification of license thereof is denied.

7. Accordingly, it is ordered, That effective September 22, 1981, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, IS AMENDED with regard to the listed community:

City	Channel No.
Show Low, Arizona	228A, 243

[2] These stations include KRIM (236) in Winslow, Arizona, KIKO (262) in Globe, Arizona, and unused Channel 221A in Holbrook, Arizona.

8. Authority for the action taken herein is contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

9. It is further ordered, That this proceeding is terminated.

10. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-22379 Filed 7-30-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[Docket No. 21323 RM-2836; FCC 81-307]

Use of Subcarrier Frequencies in the Aural Baseband of Television Transmitters

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Federal Communications Commission amends its rules to permit cuing and coordinating of electronic news gathering (ENG) crews, and the control of auxiliary broadcast equipment using TV aural subcarriers. TV station licensees may now communicate with their ENG crews using a subcarrier of the regular TV sound channel. Action was necessary to permit otherwise unused spectrum from remaining unoccupied and to give TV licensees an alternative to regular communications channels which are quite crowded in certain urban areas.

EFFECTIVE DATE: August 28, 1981.

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

FOR FURTHER INFORMATION CONTACT: Stanley Schmulewitz, Broadcast Bureau (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Adopted: June 30, 1981.

Released: July 14, 1981.

By the Commission: Commissioners Fogarty and Jones absent.

In the matter of the Use of Subcarrier Frequencies in the Aural Baseband of Television Transmitters, Docket No. 21323 RM-2836, first report and order.

1. A *Notice of Proposed Rule Making* was released in this proceeding on December 3, 1979 (FCC 79-768, 44 FR 70201), in response to a petition from Boston Broadcasters, Inc. ("BBI"), licensee of TV Station WCVB-TV, Channel 5, Boston, Massachusetts. The *Notice* proposed, as requested by the petitioner, to permit the use of subcarriers in the aural baseband of television broadcast transmitters [1] for cuing and coordinating electronic news gathering ("ENG") crews. Also proposed in the *Notice* were technical standards for this operation and monitoring requirements to insure that this expanded subcarrier use would cause no program degradation.

2. The *Notice* discussed the possibility of using aural subcarriers for purposes other than, and in addition to, the one proposed. One such use often mentioned is stereophonic sound. Consideration of this and other subcarrier operations will be postponed, however, because we have no specific proposals before us at this time. Moreover, technical studies and tests concerning such uses are still being performed by the Electronic Industries Association ("EIA") and others.

3. The Commission based its proposed revision of the rules on the burgeoning use of ENG in TV news programming and the consequent need for licensees to maintain communications with ENG crews in the field. While licensees could possibly meet their communication requirements through the use of remote pickup facilities, the spectrum allocated for such operations is well used at the present time. In addition, the range of the aural subcarrier will be greater than that possible with most remote pickup frequencies.

4. An inherent drawback relating to the use of aural subcarriers is the slight attenuation of the main program audio strength with the injection of the subcarrier, assuming maintenance of a 100% modulation limitation. The resultant slight decrease in audio signal will not significantly affect the area of program coverage, however, or the audio level of the program at the receiver.

5. The *Notice* requested comments on the proposed technical standards and on their possible effects on cable systems. Comments were also expected on other provisions of the proposed rules and on related issues. Submissions were received from 18 parties and replies from 2.

[1] Subparagraph 73.682(a)(23) of the FCC rules presently limits multiplexing of the aural carrier to transmitting telemetry and alerting signals from the transmitter site to the control point of a TV broadcast station authorized to operate by remote control.

6. Comments can be summarized as follows in regard to their support for, or opposition to, the use of aural subcarriers as proposed in the *Notice*. Thirteen parties including NBC, Inc. ("NBC"), CBS, Inc. ("CBS") and American Broadcasting Companies, Inc. ("ABC") support the *Notice*. Public Broadcasting Service ("PBS") opposes it. Switzer Engineering Services, Ltd. ("Switzer"), consultant to various Canadian cable systems, questions the wisdom of authorizing this service in view of the impending development of TV stereo, and the need for it in view of the availability of remote pickup facilities. McMartin Industries, Inc. ("McMartin") and Lawrence and Eileen Tokar are noncommittal to the ENG subcarrier uses. EIA "neither supports nor opposes" it.

7. Other pertinent comments are as follows: Switzer has observed no potential for interchannel interference on cable. Group W and McMartin support an injection level limit of 15% for any one subcarrier and for the arithmetic sum of all subcarriers. CBS and Chronicle Broadcasting Company ("Chronicle"), licensee of KRON–TV, San Francisco, and WOWT(TV), Omaha, say that aural subcarrier signals should be permitted for the additional use of activating ENG relay equipment. CBS says that the proposed rule changes should be clarified to indicate that the ENG and telemetry signals can be transmitted simultaneously. NBC and McMartin favor increases in the maximum frequency deviation of the aural carrier from the current ±25 kHz. Type approval and acceptance for modulation monitors were discussed by NBC, McMartin, and the National Association of Broadcasters ("NAB"). NBC says that the type of subcarrier modulation should be user determined in order to foster bandwidth utilization techniques and experimentation.

8. Reply comments were submitted by BBI and ABC in response to the comments of PBS and Switzer. BBI states that there is a need for the proposed subcarrier use and that this will not impede the development of other subcarrier uses such as stereo. ABC states that there has been no demonstrated potential for interchannel interference on cable systems by the proposed subcarrier use and that this use will not impede other uses. ABC supports the CBS comments suggesting clarification of the proposed rules to permit simultaneous telemetry and ENG transmissions. ABC also agrees with CBS and Chronicle concerning the use of the subcarriers to activate relay equipment.

9. Of the comments we received, only one, that of PBS, opposed the use of TV aural subcarriers for cuing and coordinating ENG crews. The opposition of PBS is based on its concern for the effect such use will have on other subcarrier applications, *e.g.*, TV stereo. This concern, however, was previously addressed in the *Notice*. Therein the Commission encouraged further study of TV aural subcarriers and warned that rules now adopted may be changed as part of a comprehensive plan for these subcarriers. Until such time as that occurs, amendment of the Commission's Rules to permit ENG cuing and coordinating gives licensees the opportunity to use otherwise vacant spectrum. Therefore, the Commission finds that the public interest is best served by adoption of this proposal in principle. The rules adopted herein will include the clarifiaction sought by CBS and ABC to indicate that telemetry and ENG signals can be transmitted simultaneously. They will also permit the activation of relay equipment as a permissible use of the subcarriers.

10. The Commission rejects the suggestions that the modulation means be individually determined by licensees and that the maximum frequency deviation be increased. These items are being considered by the EIA committee and we will await their report before taking any action in this regard. In the meantime, FM modulation of the subcarrier will be required. Licensees may select any appropriate subcarrier frequencies and deviations such that the instantaneous subcarrier frequency will at all times be between 20 kHz and 75 kHz.

11. The permissible arithmetic sum of modulation of the main carrier by subcarriers will be the proposed 15%. However, we will permit this 15% to be allotted in any way among one or more subcarriers. The system output FM and AM noise levels will be −55 dB and −50 dB, respectively. The crosstalk limit will be −55 dB. The data submitted indicate that these requirements can be met.

12. Since this *First Report and Order* is intended to allow TV aural subcarrier use during ENG operations, we wish to make both the administrative and technical implementation of the expanded service as convenient as possible. Therefore no specific filings to or authorization from the Commission will be required for TV licensees to commence using subcarriers for ENG purposes. Some existing type-accepted TV transmitters are designed for subcarrier injection. At this time, we are unaware of whether all TV aural transmitters are readily adaptable to subcarrier operation without circuit or mechanical modifications. Therefore licensees must consult with the manufacturers of their transmitters concerning effective procedures for adding subcarrier operation if a subcarrier input port is not provided. Transmitter modifications which require only the addition of components to mix the subcarrier with the baseband audio signal, without modification of the modulator circuits, are permissible changes which do not require prior Commission authorization. The rules being adopted require that sufficient aural transmitter performance measurements be made with the subcarrier in operation to show compliance with the noise and sub-channel to main channel crosstalk specifications. Records of the transmitter changes and measurement procedures and results are to be retained in the station files.

13. Sufficient information has not been obtained relating to standards for modulation monitors to be used in this connection. Until such time as adequate information is obtained we will order that the licensee must have an appropriate means of measuring total modulation of the carrier, and the injection level of each subcarrier. Existing TV aural modulation monitors used by licensees do not necessarily respond to modulation frequencies above the normal audio band and therefore may not accurately indicate subcarrier injection modulation.

14. In view of the preceding discussion and under the authority of Sections 4(i), 303 (f), (g), and (r), and 307(b) of the Communications Act of 1934, as amended. IT IS ORDERED, That effective August 28, 1981, Part 73 of the Commission's Rules and Regulations is amended in accordance with the attached Appendix. Additional amendments relating to the use of subcarrier frequencies in the aural baseband of television transmitters will be discussed in future Notices in this proceeding. Such Notices will be issued as more information is made available to us. For further information concerning this proceeding, contact Stanley Schmulewitz, Broadcast Bureau, (202) 632–9660.

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

Federal Communications Commission.
William J. Tricarico,
Secretary.

Attachment: Appendix.

Appendix

Part 73, Chapter 1, Title 47 of the Code of Federal Regulations is amended as follows:

1. In § 73.682, paragraph (a)(23) is revised in its entirety to read as follows:

§ 73.682 Transmission standards.

(a) Transmission Standards. * * *

(23) Multiplexing of the aural carrier is permitted to transmit telemetry and alerting signals from the transmitter site to the control point of a TV broadcast station authorized to operate by remote control. Multiplex aural subcarriers may also be used to transmit control tones used in association with auxiliary broadcast service equipment for electronic news gathering operations, and for the purpose of cuing and coordinating broadcast personnel at remote locations. Use of multiplex subcarrier transmissions is subject to the following conditions:

(i) Frequency modulation of the subcarrier must be used.

(ii) The instantaneous frequency of subcarriers must at all times be within the range 20 kHz to 75 kHz.

(iii) The arithmetic sum of modulation of the main carrier by subcarriers must not exceed 15%.

(iv) The total modulation of the main carrier, including subcarriers, must not exceed 100%.

(v) Multiplexing of the aural carrier must not result in transmitting system output noise levels exceeding those specified in § 73.687(b) (4) and (5).

(vi) Frequency modulation of the main carrier caused by the subcarrier operation (crosstalk) must, in the audio frequency band 50 to 15,000 Hz, be at least 55 dB below 100% modulation.

(vii) The logging announcement and other requirements imposed by §§ 73.1201, 73.1208, 73.1212, 73.1810 and 73.1820 are not applicable to information transmitted on subcarrier frequencies.

(viii) The modulation of the main carrier by subcarriers and the frequency of each subcarrier shall be measured as often as necessary to ensure compliance with (a)(23) (ii) and (iii) of this section. However, in any event, the measurements must be made at least once each calendar month with not more than 40 days between successive measurements.

* * * * *

2. In § 73.1830, paragraph (a)(4)(iii) is added to read as follows:

§ 73.1830 Maintenance logs.

(a) * * *

(4) * * *

(iii) The entries for the measurements required by 73.682(a)(23)(viii) concerning subcarrier frequency measurements and measurements of main carrier modulation by subcarriers.

* * * * *

3. In § 73.691, paragraph (c) is added as follows:

§ 73.691 Modulation monitors.

* * * * *

(c) Stations using aural subcarriers must have appropriate instrumentation for measuring the total percentage modulation of the main carrier including that caused by all subcarriers, and a means for determining the injection level of each subcarrier. Indication of total modulation must be available to the duty transmitter operator at all times.

Note.—Standards for type approval of modulation monitors for multiplexed TV aural transmissions have not been established at this time. Therefore, licensees may use any appropriate instruments capable of measuring total modulation and subcarrier injection.

[FR Doc. 81-22369 Filed 7-30-81; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Service Order No. 1496]

Car Service; Burlington Northern Inc. and Fort Worth & Denver Railway Co. Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Third revised service order No. 1495.

SUMMARY: Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Public Law 96–254, this order authorizes the Burlington Northern and Fort Worth and Denver to provide interim service over the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 11:59 p.m., July 31, 1981, and continuing in effect until 11:59 p.m., September 30, 1981, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840.

Decided: July 27, 1981.

Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Pub. L. 96–254, (RITEA), the Commission is authorizing Burlington Northern, Inc. (BN) and Fort Worth and Denver Railway Company (FWD) to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor, (William M. Gibbons, Trustee), (RI) and to use such tracks and facilities as are necessary for that operation.

In view of the urgent need for continued service over RI's lines pending the implementation of long-range solutions, this order permits BN and FWD to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

Appendix A of the previous order is revised at Item 2.C., to reflect the requested authority reduction by FWD.

It is the opinion of the Commission that an emergency exists requiring that the BN and FWD, as indicated in the attached appendix, be authorized to conduct operations using RI tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and good cause exists for making this order effective upon less than thirty days notice.

It is ordered.

§ 1033.1495 Service Order No. 1495.

(a) Burlington Northern Inc. and Fort Worth and Denver Railway Company authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company, Debtor, (William M. Gibbons, Trustee) Burlington Northern Inc. (BN) and Fort Worth and Denver Railway Company (FWD) are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI), as listed in Appendix A to this order, in order to provide interim service over the RI.

(b) The Trustee shall permit the BN and FWD to enter upon the property of the RI to conduct service as authorized in paragraph (a).

(c) The Trustee will be compensated on terms established between the Trustee and the BN and FWD; or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 122(a) Pub. L. 96–254.

(d) Interim operators, authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced on the expected commencement date of those operations.

(e) BN and FWD, as authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the RI Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of operations over the RI lines authorized in paragraph (a), BN and FWD shall be responsible for preserving the value of the lines, associated with each operation, to the RI estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties, or failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) *Rate applicable.* Inasmuch as the operations described in Appendix A by BN and FWD over tracks previously operated by the RI are deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs naming rates and routes specifically applicable become effective.

1. The operator under this temporary authority will not be required to protect transit rate obligations incurred by the RI or the directed carrier, Kansas City Terminal Railway Company, on transit balances currently held in storage.

(k) In transporting traffic over these lines, the interim operators described in Appendix A shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(l) To the maximum extent practicable, the carriers providing service under this order shall use the employees who normally would have performed the work in connection with traffic moving over the lines subject to this Order.

(m) *Effective date.* This order shall become effective at 11:59 p.m., July 31, 1981.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., September 30, 1981, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304, 10305, and Section 122, Pub. L. 96–254.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

Appendix A

RI Lines Authorized To Be Operated by Interim Operator

1. Burlington Northern Inc. (BN):

A. Burlington, Iowa (milepost 0 to milepost 2.06).

B. Fairfield, Iowa (milepost 275.2 to milepost 274.7).

C. Henry, Illinois (milepost 126) to Peoria, Illinois (milepost 164.35) including the Keller Branch (milepost 1.55 to 8.62).

D. Phillipsburg, Kansas (milepost 282) to Stratton, Colorado (milepost 473).

E. At Okeene, Oklahoma.

2. Fort Worth and Denver Railway Company (FWD):

A. From Amarillo to Bushland, Texas, including terminal trackage at Amarillo, and approximately three (3) miles northerly along the old Liberal Line.

B. North Fort Worth, Texas (mileposts 603.0 to 611.4).

[FR Doc. 81-22363 Filed 7-30-81; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[Service Order No. 1493; Amendment No. 5]

Car Service; Escanaba & Lake Superior Railroad Co. Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul & Pacific Railroad Co., Debtor (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 5 to Service Order No. 1493.

SUMMARY: Amendment No. 5 extends the expiration date of Service Order No. 1493, which authorizes Escanaba and Lake Superior Railroad Company to use tracks and/or facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie, Trustee) (MILW). The MILW Trustee has indicated that sufficient progress has been made in negotiations on compensation and that he concurs with this extension.

EFFECTIVE DATE: 11:59 p.m., July 31, 1981, and continuing in effect until 11:59 p.m., August 31, 1981, unless modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840.

Decided: July 27, 1981.

Upon further consideration of Service Order No. 1493 (46 FR 10742, 14896, 19822, 25311, and 34593), and good cause appearing therefor:

It is ordered: Escanaba and Lake Superior Railroad Company authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific, debtor, (Richard B. Ogilvie, Trustee).

Service Order No. 1493 is amended by substituting the following paragraph (n) for paragraph (n) thereof:

(n) *Expiration date.* The provisions of this order are extended to permit an additional (30) thirty days for the Escanaba and Lake Superior Railroad Company to continue compensation negotiations, and shall expire at 11:59 p.m., August 31, 1981, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., July 31, 1981.

This action is taken under the authority of 49 U.S.C. 10304–10305 and Section 122, Pub. L. 96–254.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service

and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-23364 Filed 7-30-81; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 46, No. 147
Friday, July 31, 1981

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Ch. I

Regulatory Agenda

AGENCY: Office of Personnel Management.

ACTION: Semiannual agenda of regulations.

SUMMARY: The following Office of Personnel Management regulations are scheduled for review or development during the 6-month period from May 1 through October 31, 1981. This agenda carries out OPM's responsibilities to publish semiannual agenda under E.O. 12291, Federal Regulation, and the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

This publication in the **Federal Register** does not impose any binding obligation on the Office of Personnel Management with regard to any specific item on the Agenda. Regulatory action in addition to the items listed is not precluded.

FOR FURTHER INFORMATION CONTACT: Beverly McCain Jones, Issuance System Office, Office of Planning and Evaluation (202) 254–7086.

Office of Personnel Management.

Beverly McCain Jones,

Issuance System Manager.

Regulations Scheduled for Review or Development

[May 1 through Oct. 31, 1981]

CFR Part (and subpart or section number if applicable) or Other Authority	Title of affected part	Brief description and justification	Knowledgeable official responsible office, and telephone number	Major rule; EO 12291	Affects small entities
1. 5 CFR Part 293	Personnel Records and Files	Final regulations to establish an Employee Performance File, analogous to the existing regulations for the Official Personnel Folder, as part of overall agency performance appraisal systems. Target Date: 8/81.	William H. Lynch, Work Force Information Division, ACE, AR (202) 254–9790; (202) 254–9793.	No	No.
2. 5 CFR Part 294	Availability of Official Information	Guidance for obtaining information from OPM, and OPM information from agencies, under the Freedom of Information Act. NOTE.—Material must go out to agencies for comment before official publication. Obtaining agency comments on a voluntary basis will require 60 days. If comments occassion changes, regulations will go back through the clearance process, then go forward to Federal Register.	William C. Duffy, Chief, Administrative Systems Division, Office of Management (202) 632–4533.	No	No.
3. 5 CFR Part 307, § 307.105.	Veterans Readjustment Appointments	To clarify the right of VRAs to appeal from termination during their first year of service on the same basis as employees in the competitive service (5 CFR 315.804, 815, 806) and to include reference to the right of VRAs who have completed 1 year of service to appeal removal under 5 CFR 432 and 5 CFR 752C. For development. Target Date: 9/81.	John Schultz, Office of Policy Analysis and Development, Staffing Services (202) 632–4422.	No	No.
4. 5 CFR Part 307	Veterans Readjustment Appointments	Proposed extension of VRA Program beyond 9/30/81 contingent on legislation. *Also see #7.* Target Date: 8/81.	A. Diane Graham, Office of Affirmative Employment Programs (202) 632–4420.	No	No.
5. 5 CFR Part 315, § 315.607.	Noncompetitive Appointment of Present and Former Peace Corps Personnel.	Revised regulations to reflect changes in eligibility requirements made by Pub. L. 96–465. Target Date: 7/81.	Tracy Spencer, Noncompetitive Staffing and College Relations, Staffing Services, (202) 632–6000.	No	No.
6. 5 CFR Part 316, § 316.302 and § 316.402.	Temporary and Term Employment	Regulations to permit noncompetitive temporary and term appointment of persons eligible for career appointment under 5 USC 3304(c). Target Date: Final regulations 8/81.	Tracy Spencer, Noncompetitive Staffing and College Relations, Staffing Services (202) 632–6000.	No	No.
7. 5 CFR Part 316	Kinds of Employment for Veterans Readjustment Appointment Eligibles.	Proposed extension affecting temporary and term employment for VRA eligibles beyond 9/30/81 contingent on legislation. Target Date: 8/81.	A. Diane Graham, Office of Affirmative Employment Programs (202) 632–4420.	No	No.
8. 5 CFR Part 317 Subpart G.	SES Career Appointment by Reinstatement.	Final regulations on reinstatement to an SES career appointment following (a) a voluntary separation from SES, or (b) a Presidential appointment. Target Date: 10/81.	Ann Ugelow, SES Division, EPMD (202) 632–6820.	No	No.
9. 5 CFR Part 317 Subpart H.	Career Appointees: Retention of SES Provisions Following a Presidential Appointment.	Regulations to implement 5 U.S.C. 3392(c) regarding the right of SES career appointees to retain certain SES provisions while serving under a Presidential appointment made by and with the advice and consent of the Senate. Target Date: Proposed regulations 9/81.	Ann Ugelow, SES Division, EPMD (202) 632–6820.	No	No.

Regulations Scheduled for Review or Development—Continued

[May 1 through Oct. 31, 1981]

CFR Part (and subpart or section number if applicable) or Other Authority	Title of affected part	Brief description and justification	Knowledgeable official responsible office, and telephone number	Major rule; EO 12291	Affects small entities
10. 5 CFR Part 330 Subpart G	Displaced Employee Program	Revise regulations to provide limited benefits to spouses of transferred Federal employees; reaffirm agency's primary responsibility to assist its own employees; remove requirement that disability annuitant be under age 60; clarify ineligibility of Schedule C employees; modify conditions under which employee eligibility can be terminated; recognize role of agency delegated examining units. Target Date: Final regulations 7/81.	Cathy Lundblad, Non-competitive Staffing and College Relations, Staffing Services (202) 632-6000.	No	No.
11. 5 CFR Parts 339 432, 752, and 931.	Medical Qualification Requirements; Reduction in Grade and Removal Based on Unacceptable Performance; Adverse Action, Retirement.	Final regulations governing medical examinations of Federal employees and agency filed disability retirement applications. Target Date: 9/81.	Gay Gardner, Office of Pay and Benefits Policy, Compensation, (202) 632-4684.	No	No.
12. 5 CFR Part 352	Reemployment Rights after Service with Panama Canal Commission.	Proposed subpart I for reemployment rights for Federal employees who accept assignment with the Panama Canal Commission. Target Date: 7/81.	Leota Shelkey, Office of Policy Analysis and Development, Staffing Services (202) 632-6817.	No	No.
13. 5 CFR Part 352	Reemployment Rights after Service with U.S. Senate Committee on Appropriations.	Add new subpart covering reemployment following service with the U.S. Senate Committee on Appropriations under provisions of 2 U.S.C. 67a. Delete Subpart F covering reemployment after service in the Economic Stabilization Program because applicable law has been repealed. Target Date: Final regulations 9/81.	Tracy Spencer, Non-competitive Staffing and College Relations, Staffing Services (202) 632-6000.	No	No.
14. 5 CFR Part 410, § 410.302.	Training: Selection and Assignment of Trainees.	Final regulation concerning when merit promotion procedures must be used in selecting employees for training. Present regulation applied to an excessive number of training instances. Target Date: Final regulations 9/81.	Constance Guitian, Training Policy Division WED (202) 653-6171.	No	No.
15. 5 CFR Part 410, § 410.503.	Training: General Prohibitions on Trainng Through Non-Government Facilities.	Final regulations to clarify requirement to consider already qualified employees for positions before providing training in non-government facilities. Present regulation applies to an excessive number of training instances. Target Date: Final regulations 9/81.	Constance Guitian, Training Policy Division, WED (202) 653-6171.	No	No.
16. 5 CFR Part 410, § 410.508 and § 410.509.	Training: Agreement to Continue in Service and Failure to Fulfill Agreement to Continue in Service.	Proposed regulations to clarify procedures governing continued service agreement and provide due process procedures when an agency recovers expenses from employee who fails to continue in service after training. Target Date: Proposed regulations 8/81.	Constance Guitian, Training Policy Division WED (202) 653-6171.	No	No.
17. 5 CFR Part 410, § 410.603.	Training: Determination of Necessary Expenses of Training.	Proposed regulations to standardize per diem for extended training assignments. Target Date: Final regulations 8/81.	Michael Kurup, Training Policy Division, WED (202) 653-6171.	No	No.
18. 5 CFR Part 430, Subpart B.	Performance Appraisal	Final amendment to include a statutory requirement regarding the use of performance standards in appraising employee performance on elements. See FPM Letter 430-4 dated 3/80. Target Date: Amendment will be made after 10/1/81.	Nat Brown, Performance Appraisal Services Division, WED (202) 632-8950.	No	No.
19. 5 CFR Part 432	Reduction in Grade and Removal Based on Unacceptable Performance.	Final amendment clarifying agency's obligations when an employee's health is an issue. Target Date: Final regulations 9/81.	Wilma Lehman, Office of Productivity Programs, WED (202) 632-7776.	No	No.
20. 5 CFR Part 451, Subpart B, § 451.207.	Incentive Awards: Eligibility	Proposed revision to regulation would exclude members of the Senior Executive Service from eligibility for lump sum cash awards for sustained superior job performance. Target Date: Final regulations 9/81.	Richard P. Brengel, Office of Productivity Programs, WED (202) 632-4596.	No	No.
21. 5 CFR Part 470	Personnel Research Programs and Demonstration Projects.	Add new Part 470 to implement programs for conducting reserach and development projects. Target Date: Proposed regulations 8/81.	Donald Hill, Office of Planning and Evaluation, (202) 632-6898.	No	No.
22. 5 CFR Part 511, § 511.605; 5 CFR Part 511, § 511.703.	Classification Under the General Schedule.	Clarify retroactive effective dates for employees with retained grade. Target Date: 7/81.	Frank T. Catenaccio, Classification Appeals Office, (202) 632-7744.	No	No.
23. 5 CFR Part 531, Subpart B.	Determining Rate of Basic Pay	Proposed revised regulations concerning use of highest previous rate, pay on promotion, pay schedule conversion rules, and movement between pay systems. Target Date: 7/82.	Donald J. Winstead, Office of Pay and Benefits Policy, Compensation, (202) 632-4634.	No	No.
24. 5 CFR Part 531 § 531.204.	Pay Under the General Schedule	Proposed regulation to provide pay determination rule for loss of merit pay status. Target Date: 7/81.	Donald J. Winstead, Office of Pay and Benefits Policy, Compensation, (202) 632-4634; Pete Rynshaw (202) 632-6127.	No	No.
25. 5 CFR Part 531, Subpart C.	Pay Adjustments for Supervisors	Proposed revised regulations to reflect Comptroller General decision and enactment of grade and pay retention statutes. Target Date: 5/82 for final regulations.	Donald J. Winstead, Office of Pay and Benefits Policy, Compensation Group (202) 632-4634.	No	No.

Regulations Scheduled for Review or Development—Continued

[May 1 through Oct. 31, 1981]

CFR Part (and subpart or section number if applicable) or Other Authority	Title of affected part	Brief description and justification	Knowledgeable official responsible office, and telephone number	Major rule; EO 12291	Affects small entities
26. 5 CFR Part 531, Subparts D and E.	Within-Grade Increases and Quality Step Increases.	Revision to regulations; correction of regulatory omission and editorial update. Target Date: 8/81.	Jan Karicher, Office of Pay and Benefits Policy, Compensation, (202) 632-4684.	No	No.
27. 5 CFR Part 532, § 532.701 through § 532.703.	Pay Under Prevailing Rate Systems	Revisions to regulations designed to streamline appellate process. Target Date: 8/81.	Frank T. Catenaccio, Classification Appeals Office, AR (202) 632-7744.	No	No.
28. 5 CFR Part 536	Grade and Pay Retention	Proposed revised regulations to provide for termination of grade and pay retention benefits and eligibility for these benefits upon transfer to a new agency, and to clarify appeal rights to OPM when an employee loses eligibility for benefits by declining an offer of another position. Target Date: 8/81.	Roger Menke, Office of Pay and Benefits Policy, (202) 632-4684.	No	No.
29. 5 CFR Part 550	Pay Administration (General)	Proposed regulations on the installment collection of indebtedness because of erroneous payment made by an agency. Target Date: 7/81.	Patricia Rochester, Office of Pay and Benefits Policy, Compensation, (202) 632-4634.	No	No.
30. 5 CFR Part 550, Subpart H.	Back Pay	Final regulations to provide for payment of reasonable attorney fees in back pay cases. Target Date: 7/81.	Donald J. Winstead, Office of Pay and Benefits Policy, Compensation, (202).	No	No.
31. 5 CFR Part 550, Subpart J.	Pay Administration, Adjustment of Work Schedules for Religious Observances.	Proposed regulations to implement title IV of the Federal Employee Flexible and Compressed Work Schedule Act of 1978. Target Date; 9/81.	Dwight W. Brown, Office of Pay and Benefits Policy, Compensation (202) 632-4634.	No	No.
32. 5 CFR Parts 550 and 610.	Pay Administration and Hours of Work.	Proposed regulations to clarify the definition of the phrase "regularly scheduled" as it applies to scheduling work week under chapters 55 and 61 of title 5, U.S.C. Target Date: 8/81.	Dwight W. Brown, Office of Pay and Benefits Policy, Compensation (202) 632-4634.	No	No.
33. 5 CFR Parts 550 and 610.	Pay Administration and Hours or Work.	Proposed regulations to allow agencies to "round up" and "round down" to nearest quarter hour (or fractions less than a quarter of an hour) for crediting irregular, unscheduled overtime work. Target Date: 9/81.	Mary Angel, Office of Pay and Benefits Policy, Compensation (202) 632-4684.	No	No.
34. 5 CFR Part 551	Pay Administration under the FLSA-Exemptions.	Proposed revised regulations to simplify the exemption determination process. Target Date: 10/81.	Mario Caviglia, Compliance Branch, ACE, AR (202) 632-4540.	No	No.
35. 5 CFR Part 551 Subpart F.	Pay Administration under the FLSA-Compliance.	Proposed new regulation to implement the FLSA Compliance Program. Target Date: 10/81.	Mario Caviglia, Compliance Branch, ACE, AR (202) 632-4540.	No	No.
36. 5 CFR Part 630 Subpart I.	Court Leave	Proposed regulations on the application of court leave. Target Date: 9/81.	Margaret Goodell, Office of Pay and Benefits Policy, Compensation (202) 632-4684.	No	No.
37. 5 CFR Part 715	Actions in the Interest of the Employee.	Final regulations covering voluntary actions and other actions in the interest of the employee, including cancellation and correction of separations, reductions in pay, suspensions, furloughs, etc. Target Date: Final regulations 9/81.	Cynthia Field, Office of Productivity Programs, WED (202) 632-7778.	No	No.
38. 5 CFR Part 720	Federal Equal Opportunity Recruitment Program (Race, sex, handicap, and national origin systems).	Regulations codify EEOC delegations to OPM for operational control of agency information systems implementing affirmative recruitment programs and statistical reports to OPM.	Dr. Philip A. D. Schneider Work Force Information Division, AR (202) 632-6806.	No	No.
39. 5 CFR Part 720	Federal Equal Opportunity Recruitment Program (FEORP).	Final regulations to revise Part 720 to simplify data requirements relating to FEORP. OPM will provide all data, including calculations of underrepresentation, agencies needed to implement the program.	A. Diane Graham, Office of Affirmative Employment Programs (202) 632-4420.	No	No.
40. 5 CFR Part 731	Suitability for Federal Employment	Proposed new part to reflect delegation of suitability rating authority under CSRA. Target Date: 12/81.	Robert Hubbard, Division of Personnel Investigations, Staffing Services (202) 632-6152.	No	No.
41. 5 CFR Part 732	Personnel Security and Related Programs.	Proposed new part to address recent and possibly proposed changes in the personnel security program. Target Date: 10/81.	Robert Hubbard, Division of Personnel Investigations, Staffing Services (202) 632-6152.	No	No.
42. 5 CFR Part 736	Investigations	Proposed new part to reflect changes in the personnel investigations program Target Date: 10/81.	John Crandell, Division of Personnel Investigations, Staffing Services (202) 632-6152.	No	No.
43. 5 CFR Part 752	Adverse Actions	Final amendment clarifying the agency's obligations when an employee's health is an issue. Target Date: 9/81.	Cynthia Field, Office of Productivity Programs, WED (202) 632-7778.	No	No.
44. 5 CFR Part 754	Adverse Actions by OPM	Proposed regulations revising 5 CFR 754 to apply to all specific adverse actions directed by OPM against agency employees. Target Date: Proposed regulations 10/81.	Wilma Lehman, Office of Productivity Programs, WED (202) 632-7778.	No	No.

Regulations Scheduled for Review or Development—Continued

[May 1 through Oct. 31, 1981]

	CFR Part (and subpart or section number if applicable) or Other Authority	Title of affected part	Brief description and justification	Knowledgeable official responsible office, and telephone number	Major rule; EO 12291	Affects small entities
45.	5 CFR Part 771	Agency Administrative Grievance System.	Final amendment adding three exclusions and revising one. The amendment would further define appropriate employee and action coverage of the grievance system. Target Date: Final regulations 8/81.	Gary Wahlert, Office of Productivity Programs, WED (202) 632-7778.	No	No.
46.	5 CFR Part 831	Government Claims for Recovery of Indebtedness.	Proposed regulations prescribing procedures for submission of agency claims for recovery of an indebtedness against benefits due from the Civil Service Retirement System Target Date: 7/81.	Patricia Rochester, Office of Pay and Benefits Policy, Compensation, (202) 632-4634.	No	No.
47.	5 CFR Part 831, Subpart M	Retirement; Recovery of Annuity Overpayments.	Proposed regulation revising right to a hearing in certain situations when there has been an overpayment of annuity from the Civil Service Retirement System. Target Date: 8/81.	Patricia Rochester, Office of Pay and Benefits Policy, (202) 632-4634.	No	No.
48.	5 CFR Parts 831, 870, 871, and 890.	Retirement; Retention of Benefits upon Employment by Indian Tribal Organizations.	To provide for retention of CSR, FEHB, and FEGLI coverages by certain Federal employees who transfer to tribal organization employment Target Date: 8/81.	Gay Gardner, Office of Pay and Benefits Policy, Compensation, (202) 632-4634.	No	No.
49.	5 CFR Parts 831 and 890.	Retirement and Federal Employees Health Benefits Plan (FEHB).	Final regulations to amend the definition of a child to include dependency requirements. Target Date: 8/81.	Mary Angel, Office of Pay and Benefits Policy, Compensation, (202) 632-4684.	No	No.
50.	5 CFR Parts 870 and 871.	Life Insurance and Optional Life Insurance.	Final regulations to implement the Federal Employees Group Life Insurance Act of 1980. Target Date: 11/81.	John Landers, Office of Pay and Benefits Policy, Compensation, (202) 632-4684.	No	No.
51.	5 CFR Part 890	Federal Employees Health Benefits (FEHB).	Interim regulations published 12/30/80 eliminated the two deductibles an enrollee had to meet when the enrollee changed health plans during an open season and incurred covered expenses subject to a deductible before the open season change became effective at the beginning of the first pay period in January. Target Date: Proposed regulations 7/81; Final regulations 10/81.	Lauretta R. Hall, Office of Pay and Benefits Policy, Compensation (202) 632-4684.	No	No.
52.	5 CFR Part 890	Federal Employees Health Benefits (FEHB).	Final regulations to define medically underserved areas for FEHB contract year 1982. Target Date: 9/81.	Lauretta R. Hall, Office of Pay and Benefits Policy, Compensation (202) 632-4684.	No	No.
53.	5 CFR Part 890 Subpart B.	Federal Employees Health Benefits (FEHB).	Final regulations on documentation information, etc. required of FEHB carriers to conform to Federal procurement regulations: Target Date: 9/81.	Mary Ann Mercer, Office of Pay and Benefits Policy, Compensation (202) 632-4684.	No	No.
54.	5 CFR Part 890Subpart C.	Federal Employees Health Benefits (FEHB) (Registration and Enrollment).	Proposed change to enable Federal employees enrolled for high option FEHB coverage to elect low option coverage upon becoming eligible under the Civilian Health and Medical Program of the Uniformed Services. Target Date: 8/81.	Mary Ann Mercer, Office of Pay and Benefits Policy, Compensation (202) 632-4684.	No	No.
55.	5 CFR Part 900 Subparts A-G.	Intergovernmental Personnel Act Programs.	Proposed new part to reflect discontinuance of the grants program, and modification of the Standards for personnel administration. Target Date: Interim regulations 9/81; regulations 12/81.	Thomas E Thompson, Jr., Office of Planning and Evaluation (202) 632-4628.	No	No.
56.	5 CFR Part 1001 Subpart C	Regulations Governing Employees of the Office of Personnel Management: Employee Responsibilities and Conduct.	Remove Part 1001 from 5 CFR. Target Date: Proposed regulations 9/81.	Llewellyn Fischer, Office of The General Counsel,(202) 632-4518.	No	No.

[FR Doc. 81-22171 Filed 7-30-81; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 282

[Amendment No. 199]

Food Stamp Program: AFDC/Food Stamp Consolidation Demonstration Project

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: Section 17(b)(1) of the 1977 Food Stamp Act authorizes the Secretary to waive requirements of the Act to the degree necessary to conduct demonstration projects designed to test program changes that might improve program administration or benefit delivery. Under the authority of this provision, the Department is proposing waivers to certain Food Stamp Program requirements to enable the Department of Health and Human Services (DHHS) to conduct a demonstration project involving increased coordination between the Aid to Families with Dependent Children (AFDC) Program and the Food Stamp Program. This project, hereafter referred to as the AFDC/Food Stamp Consolidation Project, will test the effectiveness of modifying certain requirements of both programs in order to reduce administrative complexity and cost. It is hoped that minimizing differences between these two similar programs will assist State welfare agencies in administering both more efficiently.

For the most part, the Food Stamp Program requirements which would be waived are rules which define and govern the treatment of income and resources. For the purpose of this demonstration, the food stamp regulations specified in this proposed

rulemaking would be changed to more closely agree with AFDC procedures which will be used during the project.

DATES: Comments must be received on or before August 31, 1981 in order to be assured consideration. After reviewing all comments, this Department will publish final rules. The proposed effective date of this proposal is estimated to be October 1.

ADDRESS: Comments should be addressed to: Claire Lipsman, Director, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250. All written comments will be open to public inspection at the office of the Food and Nutrition Service, USDA, during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 500 12th Street, S.W., Room 672, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Marilyn Carpenter, Chief, Program Research and Analysis Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250; 202–447–8332.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in relation to the requirements of Executive Order 12291, and it has been determined that the proposal is not a major rule as defined by that order. This proposed rule will have an effect on the economy of less than $100 million and will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. While it is difficult to predict in monetary figures the effects of this demonstration project, the sponsoring agencies anticipate a savings in administrative costs for both Federal and State agencies. Given that the project will operate in only three States, those savings will not amount to $100 million. The Department has further determined that the rule will not have an adverse effect 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. The proposed experimental changes in assistance program policies and procedures have no foreseeable effects on private enterprises here or abroad. Therefore, the rule is classified as not major.

The rule has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. No. 96–354, 94 Stat. 1164, Sept. 9, 1980). William Hoagland, Administrator, Food and Nutrition Service (FNS), has certified that this action does not have a significant economic impact on a substantial number of small entities. The proposal has no impact whatsoever on small organizations. The proposed rules establish alternatives to standard Food Stamp Program procedures, which will be tested in three States. The primary impact will be on State governments and individual recipients. To the extent that county governments operate the Food Stamp Program within States, they may be affected. However, the proposed procedure is intended to simplify administration of the Food Stamp and AFDC Programs and thus any effects should be positive. There should not be significant economic costs in conjunction with this proposal.

The Administrator of the Food and Nutrition Service has determined that it would be beneficial to shorten the customary 60 day public comment period in order not to unduly delay the DHHS implementation date of October 1, 1981. Given that these changes will have a limited impact and that the changes by-and-large are not disadvantageous to either participants or cooperating State agencies, the shorter comment period appears reasonable. Thus, comments are being solicited for 30 days after publication of this document.

Project Background

There are a number of forms of government-provided assistance for low-income people in this country. Each was devised to serve a particular clientele and focuses on meeting specific needs. Two of the foremost programs are the Aid to Families with Dependent Children (AFDC) Program and the Food Stamp Program. The AFDC Program was begun in the 1930's to give assistance to families in which the father was absent, incapacitated, or deceased. It was meant to help States pay for assistance programs they had already established; thus Federal funds were intended to augment State funds and were to be distributed through State welfare agencies. States were permitted to retain much of their decision-making power concerning standards of operation within broad Federal guidelines.

The Food Stamp Program was established in 1964. (See Pub. L. No. 88–525, 78 Stat. 703, Aug. 31, 1964.) It was devised to strengthen the agricultural economy and to provide for improved nutrition among low-income households. Unlike AFDC, households could be intact with members working, and still be eligible. While Congress chose to distribute the Federally-funded aid in the form of food coupons instead of checks, to assure that it would be used to purchase food in authorized food outlets, they also determined that the program could best be administered through the existing system of State welfare agencies that handled AFDC and other general assistance programs. States were instructed to use the same maximum income standards they used in Federally-aided public assistance programs and could generally use standards consistent with State AFDC standards to determine eligibility.

In the 1970's however, Food Stamp Program requirements and procedures were revised several times, each time diverging more from AFDC standards while both programs continued to be handled by the same State personnel. Largely due to reports in the late 1960's of chronic malnutrition not being alleviated by food stamps, Congress passed amendments in 1970–71 to set uniform national standards of eligibility and benefit levels for the Food Stamp Program. (See Pub. L. No. 91–671, 84 Stat. 2048, Jan. 11, 1971.) Such standards were partly intended to offset very low welfare payments in States unable to afford sufficient benefits. Also included in the amendments were more definite standards for treatment of certain types of income and resources which were not equivalent to AFDC standards. Congress did attempt to reduce administrative complexity by categorically declaring anyone receiving AFDC benefits eligible for food stamps. This did not eliminate administrative duplication, however, because differences in income standards required separate calculations to determine benefit levels. Differences became more pronounced as the decade continued, due to programmatic changes caused by legal challenges to each program and to more exact food stamp legislative directives in 1973 and 1977. Congress removed categorical eligibility for AFDC participants in the Food Stamp Act of 1977, recognizing that it had done little to reduce administrative duplication and had created inequity in eligibility. (See Pub. L. No. 95–113, 91 Stat. 958, Sept. 29, 1977). Additionally, the treatment of income and resources was even more precisely defined by law. The effects of the variations became more administratively burdensome as both programs expanded in size, but the reasons for such differences were becoming less and less apparent. To many, the programs increasingly seemed to be serving similar clients in similar ways, with frustrating differences in details.

Both State and Federal officials have come to realize that minimizing

distinctions between the programs could increase efficiency and ease the determination of eligibility and benefits in each. The current differences in handling resources and income, as well as in collecting and verifying information, confuse both eligibility workers and applicants, causing higher rates of error in both programs. Coordinating the way in which recipient data is gathered and used could reduce unnecessary worker error rates and job frustration by relieving workers of the task of making subtle technical distinctions. Simplifying the relationship could also help participants better understand their rights and responsibilities.

At the Federal level, several attempts have already been undertaken to increase coordination between these two programs. Officials from DHHS and USDA have participated in an Eligibility Simplification Project, in which a task force examined how to consolidate eligibility requirements for a number of assistance programs. Officials from the two Departments also confer frequently when writing new regulations to try to enhance program similarity and are working on integrated systems for quality control, as well as for monthly reporting and retrospective accounting.

The AFDC/Food Stamp Consolidation Project is another attempt to find ways of coordinating these programs. DHHS announced in the **Federal Register** on May 14, 1980 (45 FR 31924), its intention to conduct a demonstration project to test methods for improving coordination between the programs. The project goal is more efficient administration and lower error rates. The notice stated that DHHS would provide funds and waivers to offer the opportunity to test AFDC definitions of income and resources more in line with Food Stamp Program definitions.

The notice requested interested States to submit proposals for the design and operating procedures for such an experiment. Originally, the project was intended to operate in a single State. On the basis of the proposals, however, DHHS decided to authorize projects in South Carolina, Vermont, and Michigan. (The Michigan project will operate only in Berrien County and the Redford District Office of Wayne County.)

The Federal portion of funding for both operation and evaluation will be completely provided by DHHS. Since each State's project design includes an evaluation component, DHHS will not be securing an independent evaluation contractor. Reports on the results of each State's project will be provided to both FNS and DHHS for future policy consideration.

Proposed Waivers

While USDA is not assuming a lead role in this project, it is cooperating with DHHS in the establishment of operating procedures for the experiment. After being notified by DHHS of their acceptance as demonstration sites, the three sponsor States submitted to FNS requests for food stamp waivers needed for their separate experimental designs. FNS is proposing to waive the following requirements of the Act and regulations in Vermont, Michigan and South Carolina, under demonstration authority given in Section 17(b)(1) of the Food Stamp Act of 1977. Most of the proposed modifications concern the definition or treatment of income and resources. Other waivers in the proposal include an additional voluntary quit exemption, a modification to the work registration exemptions, and the development of a standard shelter insurance deduction.

FNS is proposing to waive the requirement for uniform national standards, set forth in Section 5(b) of the Act. This is needed to allow experimental variances to be tested. No change to national standards is being proposed that would lower or restrict eligibility standards or benefits levels.

FNS is proposing to exempt from the work registration requirement of the Food Stamp Program those AFDC recipients declared exempt from the Work Incentive (WIN) Program requirements under Title IV of the Social Security Act. While the WIN Program completely exempts those AFDC recipients who live an excessive distance from a WIN/State Employment Security Agency (SESA) office, Food Stamp Program rules require such people to complete a work registration form but exempts them from job search requirements and further contact with SESA staff. To guard against inappropriate continuation of exempt status, it is stipulated that a person who loses a WIN exemption without beginning participation in that program will be subject to the Food Stamp Program requirements. FNS believes this change will eliminate some unnecessary and often unproductive paperwork for both State agency staff and clients.

It is proposed that voluntary quit provisions be revised to simplify treatment of AFDC participants applying for food stamps. Currently, Section 6 of the Food Stamp Act declares a household ineligible to participate for sixty days if the household head has voluntarily quit a job without good cause, unless the household was certified for food stamps immediately prior to the quit. This proposal would extend the exemption to households already certified for AFDC at the time of the quit.

FNS is proposing to revise procedures for obtaining social security numbers (SSN's) for those individuals who do not have them at the time of application. Current regulations at § 273.6 state that either the State agency or a household member may submit an application for an SSN. If the applicant has not received an SSN within 90 days, s/he must document that an application has been made in order to continue to participate. To simplify this process, FNS proposes to have the State agency apply for SSN's for all applicants who do not have them, as is currently done in some States for AFDC purposes. This procedure will insure direct feedback from the Social Security Administration (SSA) and eliminate the need to rely on the client to provide the number, or verification of application, at a later date. The State must have made the arrangements with the SSA as specified in § 273.6(b)(2)(i) to adopt this waiver.

There are three proposed changes in the treatment of resources. The first would affect resources jointly owned by more than one household. Current rules (see § 273.8(d)) assume such a resource to be wholly available to each household, unless proven otherwise. The proposal would have only a pro rata share considered available to each joint owner, unless that share is demonstrated to be unavailable. This modification would provide for closer coordination with AFDC procedures.

The second modification addresses payments designated for restoration of a home which has been damaged in a disaster. Under current regulations at § 273.8(c)(7), governmental payments of this type are excluded if the household is subject to a legal sanction if the funds are not used as intended. The modification would extend this resource exclusion to non-government hazard insurance settlements if the household has a clear contract to restore the damaged home. This modification is in line with current AFDC policy on resource exclusions.

The third resource modification would involve simplifying the calculation of the resource value of non-excluded vehicles. Currently, regulations at § 273.8(h) instruct that all licensed vehicles not specifically excluded from resource consideration be evaluated for their fair market value, and, if applicable, for their equity value. If the fair market value exceeds the Congressionally applied limit of $4,500, that excess amount or the equity value, whichever is greater, is counted toward the household's resource limit. AFDC rules on vehicles

vary from State to State, but generally do not prescribe in such detail how to evaluate vehicle value. The proposal would remove the requirement that any licensed vehicle be evaluated for equity value. All licensed vehicles not completely excluded as resources would be evaluated for their fair market value only, with that value exceeding $4,500 applied to a household's resource level. Unlicensed vehicles, however, would continue to be individually evaluated for their equity value, unless exempted from consideration by § 273.8(e)(3), (4) or (5). The equity value would be counted in full toward a household's resource level. FNS has decided it is worthwhile to retain the $4,500 vehicle limit, as set by Congress, to guard against participants owning unreasonalby expensive vehicles. While this policy would not conform exactly to AFDC vehicle treatment in each State, it would simplify the Food Stamp Program application process without lowering or restricting resource standards for project participants.

The bulk of proposed waivers would concern treatment of income. Procedures for handling certain types of income would be changed. Addtionally, modifications would be made in four definitions of funds excluded from consideration as income, to broaden them with respect to types of payments, amounts of payments, and categories of people considered exempt.

FNS is proposing to modify the procedures used in determining whether rental income is treated as earned or unearned income for this project. Current regulations at § 273.9(b)(1)(ii) state that income derived from rental property is considered earned only if a member of the household is actively engaged in managing the property an average of 20 hours per week. These rules now entail verifying that a household member is actually spending approximately that amount of time managing the property—an unreliable and burdensome item of verification. AFDC regulations state that income from property is treated as earned income if the person's involvement in the management is "active". Thus, for this project, the 20-hour quota would be eliminated by the proposal in favor of a more general requirement that a household member assume responsibility for property management which may be defined as custodial funcitons. As further clarificatiion of this AFDC policy, the regulation would provide that income be generally considered unearned if a third party is employed to manage the property.

FNS proposes to modify the definition and treatment of irregular or infrequent income in two ways. Under regulations at §273.9(c)(2), sporadically received incme of up to $30 per quarter is currently excluded from income calculations. One proposal would account for inflation, by increasing the excludable amount while not changing the basic rule. Thus, amounts up to $25 per month (a total of $75 per quarter) could be excluded, if their receipt was infrequent or irregular.

A second option for treating sporadic income was added to the proposed rule when one State explained that the difference between the programs in regard to this item was not the amount of the dollar limit but the limit itself. It was perceived that AFDC regulations gave eligibility workers more flexibility in determining whether infrequent or irregular income would be excluded because a dollar limit is not specified.

The State requested this type of flexibility for the Food Stamp Program. FNS is permitting an optional change in language to define excludable, irregular, or infrequent income as income which is not received "on a periodic basis, making its receipt infrequent or irregular to the point that it cannot be reasonably anticipated, and which has no substantial effect on the calculation of benefits."

Another provision of this proposal addresses excludable expenses related to attending an institution of higher education. A larger portion of educational loans, scholarships, and so forth, would be excludable under the proposal than under general rules. This liberalization would bring the treatment of these educational monies much closer to AFDC treatment. Current FNS regulations permit exclusion of the portion of educational aid which is used for tuition and mandatory school fees. The proposal would exclude additionally that part of the assistance used for books, equipment and transportation. In addition, it is proposed that Basic Educational Opportunity Grants (BEOG's) be totally excluded. This categorical exclusion is proposed on the basis of a survey conducted by the Michigan State Agency which showed that all or nearly all of the maximum BEOG's are used for the newly defined excludable educational expenses. Even though there are only a minimum number of students in the Program, FNS believes these changes should result in some administrative simplification.

Current food stamp regulations exclude from consideration as income the earnings of a dependent child under 18 years of age, when such child is a student at least half-time. The proposal would remove the requirement for half-time student status and exclude the income of all dependent children under 18 in calculating eligibility and benefits.

The Act and regulations provide that funds declared by other laws to be excluded as income for use in Food Stamp Program calculations of eligibility and benefits are, in fact, not to be counted. The proposed waivers specify one additional excluded type of income. Payments to members of some Indian tribes, made under the authority of Pub. L. No. 92–254, 86 Stat. 64, Mar. 18, 1972, would be explicitly excluded from income consideration.

Modifications are also being proposed to the treatment of two deductible expenses—shelter insurance and the cost of doing business in a noncommercial boarding house.

Current regulations at § 273.9(d)(5)(ii) include insurance on the structure itself as one cost countable toward the excess shelter deduction. The exact amount spent on insurance must be claimed and verified. For program simplification, FNS is proposing to allow States to develop a shelter insurance standard to be added onto the standard utility deduction. Households which have this expense but are not entitled to the standard utility deduction could deduct the shelter insurance standard alone. Section 273.10(d)(6) would be amended to include these provisions.

FNS is proposing two new options for State agencies to use in calculating, for purposes of income exclusion, the allowable cost of doing business in a non-commercial boarding house. Current regulations at § 273.11(b)(1)(i) state that the cost of doing business can either be considered as (1) the cost of the Thrifty Food Plan for a household size equal to the number of boarders or (2) the actual documented cost of providing room and meals, if the actual cost exceeds the Thrifty Food Plan amount.

The proposal would modify the first option to permit an increase in the "cost of doing business" exclusion by using separate standard costs for room and board. The room costs would be $43 per person in the boarder group, and the standard board costs would continue to be the cost of the Thrifty Food Plan. A schedule of allowable standard costs according to the size of the boarder group and the services rendered is published in the proposed regulations. The proposal would also change how business costs are calculated when using the second option of calculating actual expenses and costs. Under the proposal, this option would define the

cost of doing business as either the actual verified expenses of providing room and board or 50 percent of gross payment received. The second option would further stipulate that if the boarder lives in the same house as the provider, the cost of doing business would not exceed the difference between actual total payment of an item and any public assistance allowances granted for that item. These provisions are perceived as improving administrative efficiency through simplification of income calculations.

While these specific waivers were not uniformly requested by all the States, each State may choose to implement any of all of them, subject to prior FNS notification and approval.

Therefore, 7 CFR Part 282 is proposed to be amended as follows:

PART 282—DEMONSTRATION, RESEARCH AND EVALUATION PROJECTS

1. In Part 282, § 282.18 is added to read as follows:

§ 282.18 AFDC/Food Stamp Consolidation Demonstration Project.

(a) *General.* Section 17(b) of the Food Stamp Act of 1977 authorizes the Secretary to conduct on a trial basis experimental projects that might increase the efficiency of the program and to waive requirements of the Act to the degree necessary to conduct such projects, so long as resource and income limits for eligibility and benefits are not lowered or further restricted. These regulations establish variations to the Food Stamp Program operating procedures which shall apply during the course of the demonstration project, hereafter referred to as the AFDC/Food Stamp Consolidation Project. In this project, certain requirements for both the Food Stamp Program and the Aid to Families with Dependent Children (AFDC) Program will be modified for closer program coordination.

(b) *Purpose.* The purpose of the AFDC/Food Stamp Consolidation Project is to test the effects of a number of program changes, particularly in defining resources and income, which are designed to simplify eligibility and benefit calculations for households applying for both programs. This project is part of a series of ongoing attempts to improve the management of administrative resources. This project is intended to test whether closer coordination in these two programs, which serve overlapping caseloads, will reduce error rates and administrative costs in both programs.

(c) *Areas of operation.* The project, which is being primarily sponsored by the Department of Health and Human Services (DHHS), will operate in the States of Vermont, South Carolina, and in Berrien County and the Redford District of Wayne County, Michigan. Certain Food Stamp Program requirements, as set forth in paragraphs (d) and (e) below, may be waived in these areas of operation.

(d) *Statutory requirements to be waived.* For the limited purpose of permitting operation of this project, the following requirements of the Act are waived and modified as explained. The three States participating in the project, and only these States, may avail themselves of any or all of the waivers and elect to use the corresponding substitute procedures set out in paragraphs (f) through (r) below. Project operators at the State level shall have the authority to develop, subject to FNS approval, whatever procedures and forms are necessary to project operations. The effective dates of waivers shall be publicized at the project sites. Other requirements may be waived as the Secretary deems necessary consistent with the limitations on the waiver authority provided in the Act. Any such waivers shall be published in the Federal Register.

(1) *Sec. 5(b) Uniform national standards.* The requirement for uniform national standards may be waived to the extent necessary to allow operation of this project.

(2) *Sec. 5(d) Exclusions from income.* Definitions of funds excluded from consideration as income within section 5(d) shall be expanded. The definitions that may be modified are those for irregular income in Section 5(d)(2); educational loans and scholarships in section 5(d)(3); and a dependent child's earnings in section 5(d)(7). Judgment payments to members of certain Indian tribes shall be specified as one of the Federal payments excluded from consideration as income for food stamp purposes, as set forth in section 5(d)(10). These modifications are explained in detail in paragraphs (f) through (r) below.

(3) *Sec. 6(d)(1)(iii) Voluntary quit provisions.* The Act declares a household ineligible for two months if the household head voluntarily quits a job without good cause, unless the household was certified for benefits immediately prior to the quit. For this project, the exemption from the voluntary quit provision may be extended to households certified for the AFDC Program prior to a quit.

(4) *Sec. 6(d)(2)(A) Work registration exemptions.* The exemption from the food stamp work registration requirement which is granted to persons subject to and complying with a work registration requirement under Title IV of the Social Security Act, as amended (42 U.S.C. 602), may be extended to persons who are exempt from the Title IV requirement.

(e) *Regulatory requirements to be waived.* All current Food Stamp Program regulations (7 CFR Parts 270 through 282) shall govern the operation of this project, except the following paragraphs, which may be waived at the option of the participating project authority: §§ 273.6(a) (2) and (3) and (b)(1) through (3); 273.7(b)(1)(iii); 273.7(n)(2)(i); 273.8(d); 273.8(e)(7); 273.8(h) (2) through (5); 273.9(b)(1)(ii); 273.9(c)(2); 273.9(c)(3); 273.9(c)(7); 273.9(d)(6)(i); and 273.11(b)(1)(ii) (A) and (B). The three States participating in this project may elect to use the appropriate substitute procedures, as set forth within paragraphs (f) through (r) below, as agreed upon by the State and FNS.

(f) *Optional project procedure: social security numbers.* (1)(i) If any household member(s) required to provide the State agency with an SSN is unable to do so prior to certification or recertification, that member shall be allowed to participate only if s/he consents to have the State agency file an application with the Social Security Administration (SSA) in his/her behalf and provides the necessary verification for such application. The State agency shall be responsible for completing the application and will receive validation of the new number when it is issued.

(ii) If any household member(s) required to provide an SSN who is unable to provide one refuses consent to having the State agency apply for an SSN in his/her behalf, and can show no good cause for this refusal, that individual shall be disqualified from participation, in accordance with paragraph (c) of § 273.6. This disqualification shall last until the individual himself obtains an SSN or until s/he consents to have the State agency apply to the SSA on his/her behalf for an SSN.

(2) *Obtaining SSN's for food stamp household members 18 years and over and children receiving income.* (i) For those individuals who provide SSN's prior to certification, recertification or at any office contact, the State agency shall record the SSN and verify it in accordance with § 273.2(f)(1)(v).

For those individuals required to have an SSN who do not have one, the State agency shall offer to and complete a Form SS–5, to obtain a SSN, at the household's request. To complete Form SS–5, the State agency must document

the verification of identity, age, and citizenship or alien status as required by SSA and forward the SS–5 to SSA. The State agency shall follow the same procedures for applicants who do not know if they have an SSN or who are unable to find their SSN.

(g) *Optional project procedure: WIN exemptions from work registration.* A household member subject to and participating in the Work Incentive Program (WIN) under Title IV of the Social Security Act is exempt from food stamp work registration requirements. Additionally, those AFDC household members who are determined exempt from the WIN Program will be considered exempt from the food stamp work registration requirements. If such a person loses his/her WIN Program exemption and does not participate in the WIN Program, s/he shall be required to comply with the food stamp work registration requirements as a condition of continuing eligibility. If the exemption claimed is questionable, the State agency shall be responsible for verifying the exemption.

(h) *Optional project procedure: exemptions from voluntary quit provisions.* Primary wage earners in households certified for the Food Stamp Program or for the Aid to Families with Dependent Children (AFDC) Program at the time they voluntarily quite a job are exempt from the voluntary quit provisions contained in § 273.7(n) and are eligible to participate in the Food Stamp Program.

(i) *Optional project procedure: jointly owned resources.* Only a pro rata share of the value of resources owned jointly by separate households shall be considered available to each household, unless it can be demonstrated by the applicant household that such resources are inaccessible to that household. If the household can demonstrate that it has access to less than a pro rata portion of the resource, the value of that lesser portion of the resource shall be counted toward the household's resource level. The resource shall be considered totally inaccessible to the household if the resource cannot practically be subdivided and the household's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply.

(j) *Optional project procedure: exclusion of disaster payments.* Non-government hazard insurance payments designated for the restoration of a home damaged in a disaster shall be excluded as a resource if there is a clear contract to restore the damaged home.

(k) *Optional project procedure: handling of licensed and unlicensed vehicles.* (1) Licensed vehicles not exempt under § 273.8(h)(1) shall be individually evaluated for fair market value. That portion of their value which exceeds $4,500 shall be attributed in full toward the household's resource level, regardles of any encumbrances on the vehicle.

(2) Unlicensed vehicles, which are not exempted completely by § 273.8(e) (3), (4), or (5), shall be individually evaluated for equity value. Their equity value shall be attributed in full towards the household's resource level.

(l) *Optional project procedure: definition of rental income.* The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the costs of doing business as provided in paragraph (c) of § 273.9, shall be considered earned income. Ownership of rental property shall be considered a self-employment enterprise. Rental income shall be deemed earned if a member of the household assumes responsibility for property management, which may include custodial functions. If a third party is employed to manage the property, the income shall generally not be considered earned. Payments from a roomer or boarder shall also be considered self-employment income.

(m) *Optional project procedure; exclusion of irregular income.* Irregular income defined in either of the following ways, shall be excluded from household income:

(1) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $25 per month; or

(2) Any income in the certification period which is not received on a periodic basis, making its receipt infrequent or irregular to the point that it cannot be reasonably anticipated and which has no substantial effect on the calculation of benefits.

(n) *Optional project procedure: exclusion of educational loans and scholarships.* Educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like to the extent that they are used for tuition, mandatory school fees, books, equipment, and transportation at an institution of higher education, including correspondence schools at that level, or a school at any level for the physically or mentally handicapped, are excluded from household income. Mandatory fees are those charged to all students or those charged to all students within a certain curriculum. Basic Educational Opportunity Grants are totally excluded as income.

(o) *Optional project procedure: exclusion of earnings of a dependent child.* The earned income (as defined in paragraph (b)(1) of § 273.9) of children who are members of the household and who have not attained their 18th birthday shall be excluded as household income.

(p) *Optional project procedure: exclusion of income excluded by other statute.* In addition to the funds listed in § 273.9(c)(10) which are excluded from income consideration by other Federal statutes, judgment payments to members of certain Indian tribes, as mandated in Pub. L. 92–254, shall be excluded from consideration as income in calculating food stamp eligibility and benefits.

(q) *Optional project procedure: standard shelter insurance deduction.* The State agency shall develop a method, subject to FNS approval, for establishing a standard utility allowance for use in calculating shelter costs of those households which incur certain utility costs separate and apart from their rent or mortgage payments. Households which do not incur any separate utility charges or which are billed separately for only telephone costs, water, sewerage, and garbage collection fees shall not be entitled to claim the standard utility allowance. The standard utility allowance may have a separate standard for each utility identified in paragraph (d)(4)(iii) of § 273.9 or it may be a single standard. If it is a single standard, the State shall include the cost of telephone service, water, sewerage, and garbage collection fees in the overall allowance, even though these utilities do not, by themselves, entitle the household to use the standard utility allowance. The state may elect to establish a shelter insurance deduction to be added on to the standard utility deduction. If a household is not entitled to the standard utility allowance, it may claim actual utility expenses for any utility which it does pay separately. A household not claiming the utility standard deduction may claim the shelter insurance standard alone.

(r) *Option project procedure: boarders—determining the cost of doing business.* After determining the income received from the boarders, the State agency shall exclude that portion of the boarder payment which is a cost of doing business. The cost of doing business shall be equal to either of the following procedures provided that the amount allowed as a cost of doing business shall not exceed the payment

the household receives from the boarder for lodging and meals:

(1) The cost of providing room and/or board for the number of people in the boarder group according to the table provided below. (The cost of board shall be equal to the Thrifty Food Plan amount for the number of people in the boarder group. The ⅔ board amount shall be allowed if only two meals per day are provided to the boarder group.) If the actual room/board payment is less than the standard, only the amount actually paid would be allowed.

Number of People in Boarder Group

	1	2	3	4	5	6+
Room only	43	78	112	142	169	203
Board only	63	115	165	209	248	298
Room and board	106	193	277	351	417	501
⅔ board	42	77	110	139	165	198

(2) The actual documented cost of providing room and meals, or 50 percent of the gross payment received. If actual costs are used, only separate and identifiable costs of providing room and meals to boarders shall be excluded. If the boarder household resides in the same dwelling as the provider household, the cost of doing business may not exceed the difference between the actual total payment for an item and any public assistance (PA) allowances granted to the provider for that item.

(91 Stat. 958 (7 U.S.C. 2011–2027))

(Catalogue of Federal Domestic Program No. 10.551, Food Stamps)

Dated: July 28, 1981.

Darrel E. Gray,

Acting Administrator.

[FR Doc. 81-22238 Filed 7-30-81; 8:45 am]

BILLING CODE 3410-30-M

Food Safety and Inspection Service

9 CFR Parts 320, 322, and 325

[Docket No. 76-706]

Sale, Transportation, and Marking of Meat and Meat Food Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would delete provisions for several certificates currently required for the transportation of U.S. inspected and passed edible meat and meat food products and properly denatured and identified inedible meat and meat food products. It would also establish a new procedure for returning meat and meat food products which may have become adulterated or misbranded to an official establishment and delete a provision currently requiring a permit for the transportation of these products. The effect of this proposed rule would be to reduce the paperwork requirements imposed on industry in the transportation of certain edible and inedible meat and meat food products.

DATE: Comments must be received on or before September 29, 1981.

ADDRESS: Written comments to: Regulations Coordination Division, Attn: Annie Johnson, FSIS Hearing Clerk, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 2637, South Agriculture Building, Washington, DC 20250. For additional information, see "Comments" under Supplementary Information.

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

This proposed rule is issued in conformance with Executive Order No. 12291, and has been determined to be not a "major rule" since no new costs or additional requirements are being imposed on the affected industry or others. The proposed rule will 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 grographic 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.

Effect on Small Entities

Dr. Donald L. Houston, Administrator, Food Safety and Inspection Service, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). If promulgated, it would reduce the paperwork required to be completed by industry with respect to the distribution of meat and meat food products.

Comments

Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Regulations Coordination Division and should bear a reference to the docket number located in the heading of this document. All comments made pursuant to this document will be available for public inpection in the Regulations Coordination Division between 8:00 a.m. and 4:30 p.m., Monday through Friday.

Background

It is in the public interest that meat and meat food products distributed to consumers are wholesome, not adulterated, and properly marked, labeled, and packaged. Section 10 of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 610) prohibits the sale, transportation, offer for sale or transportation, or receipt for transportation, in commerce, of meat and meat food products which are adulterated or misbranded at the time of such sale or offer for sale or transportation or recipt for transportaion. In order to prevent the distribution of meat and meat food products which are adulterated or misbranded within the meaning of the Act, the Department is required to inspect all meat and meat food products prepared at federally inspected establishments.

As a result of inquiries received from industry, and in order to effectuate less burdensome paperwork requirements, the Department is proposing to amend Part 325 of the Federal meat inspection regulations (9 CFR Part 325) to delete several requirements for certificates for U.S. inspected and passed edible meat and meat food products and properly denatured and identified inedible meat and meat food products. The Department is also proposing to delete other related regulations which result in added expenses incurred by industry but which do not measurably improve the Department's ability to assure the proper distribution of such meat and meat food products.

1. Certificate for Transportation of U.S. Inspected, Passed, and Marked Product

Part 316 of the Federal meat inspection regulations (9 CFR 316) requires all U.S. inspected and passed meat and meat food products to be conspicuously marked at the time of inspection, prior to the products being offered for sale or transportation. Section 325.4 of the Federal meat inspection regulations (9 CFR 325.4) currently requires a certificate to

[1] Pursuant to the reorganizational plans outlined in USDA Secretary's Memo 1001-1, 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.

accompany each shipment of U.S. inspected and passed product. The certificate states that the product offered for transportation in commerce is U.S. inspected and passed and so marked, and is not adulterated or misbranded. Since the products are already required to be federally inspected, passed, and properly marked prior to transportation, the Department believes this certificate is unnecessary. Therefore, the Department is proposing to delete § 325.4 of the Federal meat inspection regulations.

2. Permit to Allow Product to be Returned to an Official Establishment

Section 325.10 of the Federal meat inspection regulations (9 CFR 325.10) currently authorizes U.S. inspected and passed product, claimed by an interested party to have become adulterated or misbranded after it has been transported from an official establishment, to be returned to an official establishment for a determination whether the product has become adulterated or misbranded. In order to make this determination, the product must be transported to an official establishment where a USDA inspector is located.

Currently, the person desiring to handle the product for this purpose must notify the USDA area supervisor, in the area in which the establishment is located, and obtain a written permit (Form MP 409–1) allowing the shipment. The product must be stored until a written permit has been obtained to accompany the product to the designated official establishment. This procedure delays the actual determination whether the product has become adulterated or misbranded and may also cause a hardship on the operator of the premises where the product is being held prior to transportation to an official establishment.

In order to expedite the transportation of the product to an establishment where an official determination can be made whether or not the product has become adulterated or misbranded, the Department is proposing to delete the requirement for this permit. In its place, the Department proposes to require oral permission to be obtained from the area supervisor of the area in which the official establishment is located. The area supervisor would be required to maintain a record of the authorization and also to notify the inspector at the official establishment to which the product will be transported.

Section 325.10 currently requires a certificate to be provided by the shipper to the carrier to accompany each shipment stating that the product has been U.S. inspected, passed, and properly marked, and is alleged to be adulterated or misbranded. This requirement was originally established as a means to allow the Department to control the movement of the product. However, the Department believes this certificate would not be needed under the procedure outlined above and that the new procedure would control the movement of the product. Therefore, the Department is also proposing to delete the requirement for this certificate.

3. Certificate for Transporting Inedible Articles; Denaturing and Other Means of Identification

Section 325.11(b) of the Federal meat inspection regulations (9 CFR 325.11(b)) requires a certificate to accompany a shipment of inedible meat or meat food product certifying that the inedible product has been denatured or otherwise identified as specified in the Federal meat inspection regulations. In addition, Section 322.5 of the regulations (9 CFR 322.5) requires the filing of a certificate by the exporter of certain inedible product stating that the product has been denatured or otherwise identified as specified in the regulations. The reglations currently require inedible meat or meat food products to be denatured or shipped with specific labeling on the shipping containers in order to identify the product as not intended for use as human food. Since the denaturing of the product or the specified labeling properly identifies the product as inedible, the Department believes the certification requirement is unnecessary. Therefore, the Department is proposing to delete the certification procedure for these products.

Section 325.8 of the regulations (9 CFR 325.8) currently contains specific provisions concerning transactions in undenatured lungs or lung lobes. As a result, the general requirements contained in § 325.11 of the regulations (9 CFR 325.11) would not be applicable to lungs or lung lobes. Therefore, § 325.11 of the regulations would be amended to contain a reference to the specific requirements for lungs or lung lobes.

4. Miscellaneous Changes

Changes are also being proposed to clarify the wording of §§ 325.1 and 325.10 of the Federal meat inspection regulations (9 CFR 325.1 and 325.10). The proposed changes are not substantive and are intended simply to clarify the regulations.

Changes in §§ 320.1, 322.5, 325.1, 325.11, and 325.15 of the Federal meat inspection regulations are being proposed to delete other references to the certificate requirements which would be deleted by these proposed amendments.

1. The authority citation for Parts 320, 322 and 325 reads as follows:

Authority: 34 Stat. 1260, 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).

Accordingly, it is proposed to amend the Federal meat inspection regulations as follows:

PART 320—RECORDS REGISTRATION AND REPORTS

2. Section 320.1(b)(3) (9 CFR 320.1(b)(3)) would be revised to read as follows:

§ 320.1 Records required to be kept.

* * * * *

(b) * * *

(3) A record of seal numbers required to be kept by consignees of inedible products shipped under unofficial seals under § 325.11(b) or (e) of this subchapter, and a record of new consignees of inedible products diverted under § 325.11(e) of this subchapter.

* * * * *

PART 322—EXPORTS

§ 322.5 [Amended]

3. Section 322.5 (9 CFR 322.5) would be amended by removing the phrase following the last comma and replaced that comma with a period.

PART 325—TRANSPORTATION

4. Section 325.1 (9 CFR 325.1) would be amended by revising its heading and revising paragraph (b) to read as follows:

§ 325.1 Transactions in commerce prohibited without official inspection legend or certificate when required; exceptions; and vehicle sanitation requirements.

* * * * *

(b)(1) No carrier shall transport or receive for transportation in commerce (including transportation in the course of importation) and no person shall offer for transportation any carcass, part thereof, meat or meat food product until a certificate, if required for such transportation by this Part, is made and furnished to the carrier in one of the forms prescribed in this Part.

(2) Product offered for importation into the United States may be transported and offered and received for transportation if such product is conveyed, prior to inspection, to an authorized place of inspection, as

provided in § 327.6 of this Part, in railroad cars, trucks, or any other means of conveyance, or in packages sealed with special official import meat seals of the Department or with customs or consular seals or otherwise identified as provided in Part 327 of this subchapter.

* * * * *

§ 325.4 [Removed]

5. Part 325 (9 CFR 325) would be amended by removing the heading and text of § 325.4 (9 CFR 325.4), but the section number would be reserved, and the Table of Contents for Part 325 would be amended to reflect this change.

6. Section 325.10 (9 CFR 325.10) would be amended by revising its heading and paragraph (a) to read as follows:

§ 325.10 Handling of products which may have become adulterated or misbranded: authorization and other requirements.

(a) When it is claimed that any inspected and passed product, marked with an inspection legend, has become adulterated or misbranded after it has been transported from an official establishment, such product may be transported in commerce to an official establishment after oral permission is obtained from the area supervisor of the area in which that official establishment is located. The transportation of the product may be to the official establishment from which it had been transported or to another official establishment designated by the person desiring to handle the product. The transportation shall be authorized only for the purpose of officially determining if the product has become adulterated or misbranded and making the appropriate disposition. The area supervisor shall make a record of the authorization and such other information which will effectively identify the shipment and shall provide a copy of the record to the inspector at the establishment receiving the product. The shipper shall be furnished a copy of the authorization record upon request.

7. Section 325.10 (9 CFR 325.10) would be further amended by removing paragraph (b).

8. Section 325.10 (9 CFR 325.10) would be further amended by redesignating paragraph (c) as paragraph (b).

9. Section 325.11 (9 CFR 325.11) would be amended by removing paragraph (b).

10. Section 325.11 (9 CFR 325.11) would be further amended by revising its heading and the text of paragraphs (c) and (e).

Paragraph (a) would be amended by inserting a reference to § 325.8 of the regulations (9 CFR 325.8). Section 325.11 would be further amended by relettering paragraphs (c) through (f) as (b) through (e) and revising the text of the section as appropriate to reflect the relettering. The proposed revised heading and text of § 325.11 would read as follows:

§ 325.11 Inedible articles: denaturing and other means of identification; exceptions.

(a) Except as provided in § 325.8 and § 325.10, no carcass, part of a carcass, rendered grease, tallow, or other fat derived from the carcasses of livestock, or other meat food product, that has not been inspected and passed at an official establishment under the provisions of this subchapter and is not exempted from such inspection, and no carcass, part of a carcass, fat or other meat food product that is adulterated or misbranded, shall be offered for transportation in commerce by any person unless it is handled in accordance with paragraphs (b), (c), (d), or (e) of this section or is denatured or otherwise identified as prescribed in § 325.13, § 314.1, § 314.3, § 314.9, § 314.10, or § 314.11 of this subchapter.

(b) Inedible rendered animal fats from official or other establishments in the United States having the physical characteristics of a meat food product fit for human food may be transported in commerce without denaturing, if the following conditions are met:

(1) Such inedible rendered fat shall not be bought, sold, transported, or offered for sale or offered for transportation in commerce, or imported, except by rendering companies, dealers, brokers, or others who obtain a numbered permit for such activities from the Regional Director.

(2) Such inedible rendered animal fat may be so distributed only if consigned to a domestic manufacturer of technical articles other than for human food or to an export terminal for exportation or storage for exportation as an inedible article, and provided, in the case of such fat consigned to a domestic manufacturer, the product is for use solely by the consignee for manufacturing purposes of nonhuman food articles and may not be further sold or shipped without first receiving approval of the Regional Director: *And provided further*, That such fat intended for export and stored at a terminal point prior to export will be subject to review by Program employees to assure that it is exported as inedible.

(3) When transported in commerce, or imported, such inedible rendered fat shall be marked conspicuously with the words "technical animal fat not intended for human food" on the ends of the shipping containers, in letters not less than 2 inches high; in the case of shipping containers such as drums, tierces, barrels, and half barrels, and not less than 4 inches high in the case of tank cars and trucks. All shipping containers shall have both ends painted with a durable paint, if necessary, to provide a contrasting background for the required marking.

(4) Such inedible rendered fat shall be transported only in sealed shipping containers bearing unofficial seals applied by the shipper, which shall include the identification number assigned by said Director for the permit holder. The number shall appear on the bill of lading or other transportation documents for the shipment. The consignees in the United States must retain the seals in their records as prescribed in Part 320 of this subchapter.

(5) Any diversion or effort to divert inedible rendered fat contrary to the provisions of this paragraph (b) or other violation of the provisions of this section may result in the revocation of the permit for shipment of technical animal fat at the discretion of the Administrator.

(c) Inedible rendered animal fat derived from condemned or other inedible materials at official or other establishments in the United States may be transported in commerce if mixed with low grade offal or other materials which render the fat readily distinguishable from an article of human food, and if the outside container bears the word "inedible."

(d)(1) Except as provided in paragraphs (d) (2), (3), and (4) of this section, or in §§ 314.10 and 314.11 of this subchapter, no animal food prepared, in whole or in part, from materials derived from the carcasses of livestock in an official establishment or elsewhere, shall be transported in commerce, unless

(i) It is properly identified as animal food;

(ii) It is not represented as being a human food;

(iii) It has been denatured as prescribed in § 325.13(a)(2) so as to be readily distinguishable from an article of human food.

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, an animal food that consists of less than 5 percent of parts or products of the carcasses of livestock and that is not represented by labeling or appearance or otherwise as being a human food or as a product of the meat food industry need not be denatured in accordance with § 325.13(a)(2).

(3) Notwithstanding the provisions of paragraph (d)(1) of this section, animal food packed in hermetically sealed, retort processed, conventional retail-size containers, and retail-size packages of

semimoist animal food need not be denatured in accordance with § 325.13(a)(2) if the name of the article, as for example, "Dog and Cat Food" or "Animal Food," appears on the label in a conspicuous manner. To be considered conspicuous, the letters in the name of the articles must be at least three times as high, wide, and thick as the letters in the words denoting the use, as ingredients in the article, of the materials derived from the carcasses of livestock. The letters in the name of such article shall contrast as markedly with their background as the letters in the words denoting the use of such ingredient materials contrast with their background.

(4) The requirements of this part do not apply to any animal food which does not consist of any parts or products of the carcasses of livestock, or to livestock or poultry feed which does not consist of any such articles other than processed livestock byproducts (such as meat meal tankage, meat and bone meal, blood meal and feed grade animal fat).

(e) Except for inedible rendered animal fats and lungs or lung lobes, inedible products (including condemned products only if condemned for causes specified in § 314.11 of this subchapter) which were prepared at any official establishment, or at any State inspected establishment in any State not listed in § 331.2 of this subchapter, and which have the physical characteristics of a product fit for human food, may be transported from an official establishment or in commerce, without denaturing as required by this subchapter, if the following conditions are met:

(1) The shipper must have obtained a numbered permit for such activity from the appropriate Regional Director, as identified in § 301.2 of this subchapter. Such permit may be obtained upon written application to the appropriate Regional Director and his determination that the proposed transportation would be authorized under this paragraph (e). The application shall state the name and address of the applicant, a description of the type of his business operations, and the purpose of making such application.

(2) Such inedible products may be transported under this paragraph (e) only if consigned to a manufacturer in the United States of articles other than for human food and if the product is for use solely by the consignee for manufacturing articles not for human food. Such products may not be transported in commerce to any consignee other than the one to which they were originally shipped unless prior notice of the diversion is given to the appropriate Regional Director and a record identifying the new consignee is maintained by the shipper as required by § 320.1 of this subchapter.

(3) When transported from an official establishment or in commerce under this paragraph (e), the outside container of such inedible products shall be marked conspicuously with the words "Inedible—Not Intended for Human Food" in letters not less than 2 inches high, in the case of containers, such as cartons, drums, tierces, barrels, and half barrels, and not less than 4 inches high in the case of tank cars and trucks used to transport such products not in other containers.

(4) Such inedible products shall be transported from an official establishment or in commerce under this paragraph (e) only in railroad cars, trucks, or containers which bear unofficial seals applied by the shipper, which shall include the identification number assigned to the permit holder and an individual seal serial number assigned by the shipper; and the product so transported shall be accompanied by an invoice or bill of lading specifying the permit holder's identification number. The consignee in the United States must retain a record of the identification and serial numbers shown on the seals in his records as prescribed in Part 320 of this subchapter.

(5) Any diversion, or effort to divert, undenatured, inedible product contrary to the provisions of this paragraph (e) or other violation of the provisions of this section may result in the revocation of the permit for shipment of inedible products under this paragraph (e), at the discretion of the Administrator.

11. Section 325.15 would be revised to read as follows:

§ 325.15 Evidence of proper certification required on waybills; transfer bills, etc., for shipment by connecting carrier; forms of statement.

(a) All waybills, transfer bills, running slips, conductor's cards, or other papers accompanying a shipment, in the course of importation or otherwise in commerce, of any product shall have embodied therein, stamped thereon, or attached thereto a signed statement which shall be evidence to connecting carriers that the proper shipper's certificate, as required by § 325.5, 325.6, or 325.7, is on file with the initial carrier. No connecting carrier shall receive for transportation or transport in the course of importation or otherwise in commerce any product unless the waybill, transfer bill, running slip, conductor's card, or other papers accompanying the same includes the signed statement in the following form:

(Name of transportation company)

U.S. inspected and passed, as evidenced by shipper's certificate on file with initial carrier.
(signed).....Agent

(b) Signatures of agents to statements required under this section shall be written in full.

The reporting and recordkeeping requirements prescribed herein have been approved by the Office of Management and Budget.

Done at Washington, DC, on July 15, 1981.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 81-22218 Filed 7-30-81; 8:45 am]

BILLING CODE 3410-DM-M

Agricultural Stabilization and Conservation Service

7 CFR Part 701

Conservation and Environmental Programs

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Proposed rule.

SUMMARY: ASCS proposes to amend the existing regulations to carry out the Agricultural Conservation Program (ACP) and the Emergency Conservation Program (ECP). The proposed rule would amend the regulations governing the ACP to: (1) provide that practices cost-shared under the ACP must be approved by the county ASC committees before on-site work is begun to carry out the practice; (2) reduce the maximum cost-share level from 90 percent to 75 percent of the cost of performing the practices under the ACP, except that a higher level may be authorized by ASCS; (3) change the maximum cost-share rate under the ACP for farmers determined to be low-income farmers from 90 percent to 80 percent of the cost; and (4) encourage and promote conservation practices under the ACP that have significant energy conservation benefits. The proposed rule would also amend the existing regulations governing the ECP to provide assistance at a decreased level of cost-sharing so that cost-sharing may be provided to as many producers as possible within available funds and to provide for a maximum cost-share limitation.

DATE: Comments must be received on or before September 29, 1981 in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to: Director, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013, telephone 202–447–6221.

FOR FURTHER INFORMATION CONTACT: John Henry, Chief Conservation Program Branch, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, D.C., 20013, telephone 202–447–7333.

SUPPLEMENTARY INFORMATION: The titles and numbers of the Federal Assistance Program that this notice applies to are: Title—Agricultural Conservation Program; Number—10.063; Title—Emergency Conservation Program; Number—10.054; as found in the Catalog of Federal Domestic Assistance. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local governments are informed of this action. This proposed action has been reviewed for compliance with Executive Order 12291 and has been classified as "not major," since it will not result in an annual effect on the economy of $100 million or more. It has been determined after review of these and related regulations contained in 7 CFR 701.3, 701.9, 701.13, 701.14, 701.19, 701.51, and Part 708, for need, currency, clarity, and effectiveness, that no additional changes be made at this time. Any comments that are offered during the public comment period for these amendments to the regulations will be evaluated in development of the final rule.

The ACP is authorized generally by Sections 7–17 of the Soil Conservation and Domestic Allotment Act of 1936, as amended (16 U.S.C. 590h(b) *et seq.*) and title X of the Agricultural Act of 1970, as amended (16 U.S.C. 1501 *et seq.*). The ACP provides financial incentives and technical assistance to encourage eligible agricultural producers to voluntarily perform soil and water conservation and pollution abatement measures. The program is administered by the Agricultural Stabilization and Conservation Service (ASCS) State and county committees, as authorized by Section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended.

The proposed regulations would require that assistance under the ACP be allowed only for those practices for which a request for cost-sharing is approved by the county Agricultural Stabilization and Conservation (ASC) committee before the practice is started. The present regulations require only that the producer have a request on file with the county ASC committee before the practice is started. By requiring that a request for cost-sharing be approved by the county ASC committee before onsite conservation work is started, better use can be made of limited program funds in order to obtain the performance of needed conservation practices by producers who would not or could not otherwise perform such practices without the benefit of Federal assistance. Starting a conservation practice without approval from the county committee would indicate that the producer may be willing to perform the necessary conservation work without the benefit of the cost-share incentive.

A second principal change in the ACP that is proposed in this rule is the reduction in the maximum cost-share level from 90 percent to 75 percent of the average cost of performing the practice. The proposed rule would provide, however, that a higher cost-share level may be authorized by the Deputy Administrator, State and County Operations, ASCS, where determined to be necessary to provide an adequate incentive for producers to carry out conservation practices. The present regulations provide for a Federal cost-share level up to 90 percent of the average cost of carrying out the practice. However, the National ACP Development Group concluded that a 75 percent cost-share level would achieve the maximum conservation benefits possible within the present funding limits. The 75 percent cost share rate is also identical to the maximum level authorized by statute for ACP long-term agreements. Since farmers who participate in long-term agreements are limited to 75 percent cost-share level, the group also felt that a uniform cost-share level for both annual and long-term agreements is more desirable and equitable for all participants in the program.

A third proposed change in the regulations would reduce the maximum cost-share level under the ACP from 90 percent to 80 percent of the cost of performing practices for eligible farmers who are determined by the county ASC committee to be low-income farmers. A cost-share level of over 75 percent but not in excess of 80 percent of the average cost of performing the practice for annual agreements would sufficiently encourage participation by those producers who are determined to be low-income farmers. The proposed change will make available funds to provide cost-share assistance to additional farmers.

The proposed rule also includes authority under ACP to promote energy conservation measures. Section 259 of the Energy Security Act of 1980, Pub. L. 96–294, 94 Stat. 611, approved June 30, 1980, includes authority under ACP for the Secretary to provide cost-sharing and technical assistance to farmers to encourage energy conservation. Encouraging energy conservation measures is not authorized under present regulations.

The Emergency Conservation Program is authorized by the Agricultural Credit Act of 1978 (Pub. L. 95–334, 92 Stat. 433). This program is designed to provide cost-share funds for emergency assistance to meet only the critical needs of agricultural producers due to severe drought or other natural disaster.

The proposed changes in the ECP regulations provide that the producer must agree to pay the first 20 percent of the cost of the practice of restoring the loss. This cost is established by the county committee. The percentage level for the remainder of the cost of the practice of restoring the loss can vary depending upon the cost of the practice involved. The present rule provides for cost-sharing at a level not to exced 80 percent of the cost of performing the practice. The proposed amendment to the ECP regulations is intended to maximize the use of the limited programs funds to provide emergency assistance to as many eligible producers as possible during periods of severe drought or other natural disaster and limits the total amount to $200,000 in cost-shares per person, per disaster, including pooling agreements.

Accordingly, it is proposed that 7 CFR Part 701 be amended as follows:

1. Section 701.3 is amended by adding a new paragraph (b)(8) to read as follows:

§ 701.3 Program objective.

* * * * *

(b) * * *

(8) The types of conservation measures needed that have significant energy conserving benefits.

2. Section 701.9 is amended by adding a new paragraph (i) to read as follows:

§ 701.9 Conservation practices.

* * * * *

(i) Encourage energy conservation practices.

3. Paragraph (b) of § 701.13 is revised to read as follows:

§ 701.13 Level and rate of cost-sharing.

* * * * *

(b) Levels of cost-sharing under annual agreements for each practice shall not be in excess of 75 percent of the average cost of carrying out the practice as determined by the county committee. However, where the Deputy Administrator, State and County Operations, determines a higher level of cost-sharing is necessary to provide an adequate incentive for a conservation practice, the Deputy Administrator, State and County Operations, may specifically authorize a higher level. (See § 701.19 for special provision for low-income farmers.)

* * * * *

4. Section 701.14 is revised to read as follows:

§ 701.14 Starting of practices.

Costs will not be shared for practices or components of practices that are started before a formal approval is given by the county committee.

5. Paragraphs (a) and (b) of § 701.19 are revised to read as follows:

§ 701.19 Special provisions for low-income farmers and ranchers.

(a) Except as otherwise provided in § 701.13(c), the county committee may approve, in the case of low-income farmers and ranchers as defined in this section, levels of costs sharing of up to 80 percent of the average cost of performing practices.

(b) A low-income farmer or rancher is one who, as determined by the county committee, is a small producer whose livelihood is largely dependent on the farm or ranch and whose prospective income and financial resources for the current year are such that the farmer or rancher could not reasonably be expected to perform needed conservation practices at levels of cost-sharing applicable to other persons in the county.

* * * * *

6. Section 701.51 is revised to read as follows:

§ 701.51 Extent of cost-sharing.

(a) The maximum cost-share payment which may be made to any person by the Agricultural Stabilization and Conservation Service (ASCS) under the Emergency Conservation Program is limited to $200,000 per person, per disaster, including pooling agreements.

(b) The levels of cost-sharing for which cost-share payments may be made by ASCS for each practice under the program shall be based upon the following:

(1) The producer must agree to pay for the first twenty percent of the cost of the practice to restore the loss.

(2) With respect to the remainder of the cost of completing the practice to restore the loss, the county committee shall establish levels of cost-sharing for which payments may be made by ASCS as follows:

(i) Not to exceed eighty percent of the first $50,000 of the cost of the practice(s) to restore the loss;

(ii) Not to exceed fifty percent for the next $50,000 of the cost of the practice(s) to restore the loss; and

(iii) Not to exceed twenty-five percent of the remaining cost of the practice(s) to restore the loss.

* * * * *

(Pub. L. 74-46, Secs. 4, 7-15, 16(a), 16(f), 16(A), 17, 49 Stat. 163, as amended (16 U.S.C. 590d, 590g-590o, 590p(a), 590g); Pub. L. 93-86, Secs. 1001-1009, 87 Stat. 241 (16 U.S.C. 1501-1510); Pub. L. 95-334, Secs. 401-405, 92 Stat. 433 (16 U.S.C. 2201-2205))

Signed at Washington, D.C. July 24, 1981.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 81-22294 Filed 7-30-81; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

7 CFR Part 1701

Equipment and Construction Contract Requirements; Proposed Revision to REA Forms 198 and 200

AGENCY: Rural Electrification Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Rural Electrification Administration (REA) proposes to revise REA Form 198, "Equipment Contract," and Form 200, "Construction Contract-Generating." The proposed revisions are to incorporate clarifications and improvements gained from past experience with the present revisions. REA hereby solicits comments and recommendations from interested parties regarding changes that should be made and the reasons those changes are needed.

DATE: Public comments must be received by REA no later than August 31, 1981.

ADDRESS: Submit written comments to the Director, Power Supply Division, Rural Electrification Administration, Room 5168, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: John W. Holt, telephone number (202) 447-4771.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 CFR Part 901 et seq.), REA proposes to revise REA Form 198, "Equipment Contract" and Form 200, "Construction Contract—Generating." All written submissions made pursuant to this notice will be made available for public inspection during regular business hours at the above address.

Dated: July 24, 1981.

Joe S. Zoller,

Acting Administrator.

[FR Doc. 81-22352 Filed 7-30-81; 8:45 am]

BILLING CODE 3410-15-M

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Petitions for Rulemaking; Issuance of Quarterly Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Quarterly Report.

SUMMARY: The Nuclear Regulatory Commission has issued the June 30, 1981, Quarterly Report on Petitions for Rulemaking. This report is issued in accordance with 10 CFR 2.802 and is a quarterly summary of petitions for rulemaking that are pending final action.

ADDRESSES: A copy of this report, designated NRC Petitions for Rulemaking June 30, 1981, is available for inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington DC.

Requests for single copies of this report, or a request to be placed on an automatic distribution list for single copies of future reports, should be made in writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, Telephone 301-492-7086.

Dated at Bethesda, Maryland, this 23 day of July, 1981.

For the Nuclear Regulatory Commission.

J. M. Felton,

Director, Division of Rules and Records, Office of Administration.

[FR Doc. 81-22383 Filed 7-30-81; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 9

Public Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of Advanced Notice of Proposed Rulemaking (ANPRM).

SUMMARY: This document withdraws a proposed "plain English" version of Subpart A of Part 9 since NRC is now performing a comprehensive review and revision of all of Part 9, which will be published for public comment when completed.

EFFECTIVE DATE: July 31, 1981.

FOR FURTHER INFORMATION CONTACT: Linda L. Robinson, FOI/PA Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–8133.

SUPPLEMENTARY INFORMATION: NRC published the ANPRM seeking public comments on an experimental "plain English" revision of a portion of 10 CFR Part 9 on April 17, 1979 [44 FR 22746]. Public comments generally favored the notice but offered substitutions for specific words or phrases in the ANPRM to improve the clarity of the regulation. Subsequently, the proposed plain English project was deferred due to work assignments of higher priority. Following the accident at the Three Mile Island (TMI) nuclear plant, the Commission directed the staff to review all of the NRC regulations as part of the TMI Action Plan. The TMI Action Plan, NUREG–0660, is available for public inspection and copying in the NRC Public Document Room, 1717 H Street, NW, Washington, DC 20555. The staff has initiated a periodic and systematic review of the NRC regulations, and notice concerning the review was published on January 23, 1981 [46 FR 7380]. This is a comprehensive review to ensure, among other things, that the regulations achieve the substantive legislative goals in statutes directing NRC activities and that the regulations are written in an understandable manner. In light of the fact that NRC is reviewing all of Part 9, the ANPRM is being withdrawn. Comments received on the ANPRM will be considered in formulation of a new rule, and the proposed entire revision will be published for public comment.

Signed this 13th day of July 1981, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 81–22378 Filed 7–30–81; 8:45 am]

BILLING CODE 7590–01–M

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 400

Employees; Standards of Conduct

AGENCY: Export-Import Bank of the United States.

ACTION: Proposed revision of regulations.

SUMMARY: The Export-Import Bank of the United States is revising its regulations dealing with standards of conduct to make such regulations consistent with (1) changes in Eximbank's regulations which are being made in compliance with disclosure requirements of personal financial interests established by Title II of the Ethics in Government Act of 1978, as amended, and regulations issued by the Office of Personnel Management 5 CFR Part 734 and (2) new reporting requirements of employment and financial interests required of employees in Grades GS–11 and GS–12 pursuant to 5 CFR 735.403(d).

DATE: Comments must be received on or before September 29, 1981.

ADDRESS: Office of the General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

FOR FURTHER INFORMATION CONTACT: Warren W. Glick, General Counsel (202) 566–8334 at the above address.

SUPPLEMENTARY INFORMATION: It is proposed to amend Chapter IV of Title 12 by (a) the addition of § 400.735–17 Bank Employees Other Than Regular Full-Time and § 400.735–18 Presidential Appointees to Subpart A and (b) the deletion of Subpart E—Procedures for Submission of statements of Employment and Financial Interests, and substituting therefor a new Subpart E—Confidential Financial Statements of Bank Employees.

As the result of the deletion of old Subpart C covering the reporting requirements of presidential appointees and top-ranking personnel in the grade of GS–16 and above (and equivalent positions), it has become necessary to relocate some provisions formerly in that Subpart. Such relocation and updating in combination with other provisions of this part have been done by the procedures specified in (a) and (b) above. In addition, the new Subpart E covers the insertion in this part for the first time of reporting requirements of employees in grades GS–11 and GS–12.

Accordingly, Eximbank is amending Subpart A of Chapter IV of Title 12 to read as follows:

1. The Table of Contents for Part 400 is amended by adding §§ 400.735–17 and 400.735–18 to Subpart A.

PART 400—STANDARDS OF CONDUCT

* * * * *

Subpart A—Regular Full-Time Bank Employees—Standards of Conduct

* * * * *

Sec.

400.735–17 Bank employees other than regular full-time.

400.735–18 Presidential appointees.

2. Sections 400.735–17 and 400.735–18 are added to read as follows:

§ 400.735–17 Bank employees other than regular full-time.

Most of the statutes on employees' conduct are applicable to all directors, officers, and employees of the Bank whether full-time or part-time, whether employed or retained in a consulting capacity and whether compensated or not. However, there are special provisions applicable to part-time officers and employees of the Bank with regard to their activities before Government agencies, and the prohibition against outside compensation does not apply to officers and employees who serve without pay or to certain officers and employees who serve part time. Administrative actions and rules applicable to other than full-time officers or employees of the Bank are covered by Subpart D of this Part.

§ 400.735–18 Presidential appointees.

The rules set forth in this Subpart A are applicable to all Bank employees who were appointed to their positions by the President of the United States, except that for purposes of the determination by the official responsible for the Bank employee's appointment referred to in § 400.735–7(b)(1), members of the Board of Directors other than the President of the Bank shall have such determination made by the President of the Bank. In addition, such Bank employees are subject to the provisions of Part IV of Executive Order 11222 of May 8, 1965, relating to the requirement that they not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations

of the Bank, or which draws substantially on official data or ideas which have not become part of the body of public information.

Eximbank is revising Subpart E of Chapter IV of Title 12 to read as follows:

Subpart E—Confidential Financial Statements of Bank Employees

* * * * *

Sec.

400.735–50 Certain bank employees who are required to submit statements of employment and financial interests.
400.735–51 Time and place for submission.
400.735–52 Form of statements.
400.735–53 Confidentiality of employee's statements.
400.735–54 Effect of employee's statements on other requirements.
400.735–55 Review of statements and remedial action.
400.735–56 Exclusions from reporting requirements.

Authority: E.O. 11222 of May 8, 1965, 3 CFR E.O. 11222, 30 FR 6469 and 5 CFR 735.104.

§ 400.735–50 Certain bank employees who are required to submit statements of employment and financial interests.

Statements of employment and financial interests shall be submitted by (a) Bank employees in grades GS–11 to and including GS–15 under Section 5332 of Title 5, United States Code, who occupy positions the basic duties and responsibilities of which require the incumbent to be responsible for making a Bank decision or taking Bank action where the decision or action has an economic impact on the interest of any non-Federal enterprise and (b) Bank employees classified below GS–11 under Section 5332 of title 5, United States Code, who are in a position which otherwise meets the criteria set out in paragraph (a) of this section, and whose inclusion has been specifically justified in writing to the Office of Personnel Management as an exception that is essential to protect the integrity of the Government and avoid employee involvement in a possible conflicts-of-interest situation.

§ 400.735–51 Time and place for submission.

Statements referred to shall be submitted by all employees of the Bank (whether full-time or part-time) who are required to submit such statements on June 30 of each year. Employees who after June 30, 1973, are appointed to a position requiring submission of such statements, shall submit such statements within 30 days after appointment. All statements shall be submitted to the Chairman of the Ethics Committee. Each employee who previously submitted any such statement shall submit a supplementary statement each June 30, regardless of whether or not there were occurrences which would require changes in, or additions to, information previously submitted, and shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of title 18, United States Code, or of this part.

§ 400.735–52 Form of statements.

Statements of employment and financial interests shall be submitted on standard forms provided by the Office of Personnel Management, copies of which are available in the Personnel Office of the Bank. The following rules shall be observed in preparing the statements:

(a) The interest of a spouse, minor child, or other member of the employee's immediate household is considered to be an interest of the employee. For the purpose of paragraph (a) of this section "member of an employee's immediate household" means those blood relations who are residents of the employee's household.

(b) If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

(c) An employee is not required to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society of a charitable, religious, social, fraternal, recreational, public service, civic or political organization or a similar organization not conducted as a business enterprise. For the purpose of paragraph (c) of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 400.735–53 Confidentiality of employee's statements.

The Bank shall hold each statement of employment and financial interests, and each supplementary statement, in confidence. to insure this confidentiality, the Chairman of the Ethics Committee is designated to review and retain the statements, and shall be responsible for the maintenance of the statements in confidence, and he shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. The Bank may not disclose information from a statement except as the Office of Personnel Management or the President of the Bank may determine for good cause shown.

§ 400.735–54 Effect of employee's statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

§ 400.735–55 Review of statements and remedial action.

All statements submitted to the Chairman of the Ethics Committee shall be reviewed by him in consultation with the other members of the Ethics Committee as he deems appropriate. If any statement or information from other sources discloses a conflict of interest, or an apparent conflict of interest, between the interests of an employee and the performance of such employee's duties at the Bank, the Chairman of the Ethics Committee shall give such employee an opportunity to explain such conflict, or apparent conflict, and if such explanation is not satisfactory, the Chairman of the Ethics Committee shall take such action as he deems appropriate to resolve such conflict, or apparent conflict. If the Chairman of the Ehtics Committee is unable to resolve such conflict, or apparent conflict, he shall report the matter to the President of the Bank who shall then take appropriate remedial action to end such conflict, or apparent conflict. Remedial action may include, but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by the employee of this conflicting interest;

(c) Disciplinary action; or

(d) Disqualification for a particular assignment. Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

§ 400.735–56 Exclusions from reporting requirements.

(a) Any Bank employee who considers that his or her position has been improperly included among those

requiring the submission of statements of employment and financial interests may submit the matter for review by the Ethics Committee created pursuant to § 400.735–21 (of Subpart B of this part), or in accordance with the Bank's established procedures governing grievances and complaints as prescribed in Staff Memorandum No. 12, as revised, dated May 4, 1971.

(b) Employees in positions that meet the criteria in § 735–50 of this part may be excluded from the reporting requirements of this Subpart E when the Bank determines that:

(1) The duties of a position are at such a level of responsibility that the likelihood of the incumbent's involvement in a conflicts-of-interest situation is remote; or

(2) the duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

Warren W. Glick,

General Counsel.

July 24, 1981.

[FR Doc. 81-22443 Filed 7-30-81; 8:45 am]

BILLING CODE 6690-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Reg. 6010.8-R]

Implementation of the Civilian Health and Medical Program of the Uniformed Services

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed Amendment to Rule.

SUMMARY: This proposed rule would amend DoD Regulation 6010.8–R (32 CFR Part 199) which implements the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). This proposed amendment would eliminate residential treatment centers (RTCs) as authorized providers under CHAMPUS for new admissions on and after October 1, 1981. This change is being proposed due to continued difficulties the Program has experienced with this type of facility, and because it has been concluded that generally cases admitted to an RTC do not represent a type of level of care for which CHAMPUS benefits should be extended.

DATE: It is anticipated, if issued as a final rule, this proposed amendment would be effective October 1, 1981. Comments must be submitted on or before August 31, 1981.

ADDRESS: Office of the Assistant Secretary of Defense (Health Affairs), Room 3E339, The Pentagon, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT: Lorraine F. Carpenter, Special Assistant for CHAMPUS, Office of the Assistant Secretary of Defense (Health Affairs), telephone (202) 697–5185.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)."

Section 199.10(b)(4) outlines the services and supplies covered under CHAMPUS in residential treatment centers (RTCs). In this proposed amendment, RTCs are deleted as authorized providers of care under CHAMPUS.

CHAMPUS is a comprehensive medical benefits program, particularly with regard to treatment of mental conditions. RTCs were initially included as one of many types of authorized mental health providers under the Program (although such facilities were not generally authorized under other health programs) because it was thought that this type of facility was primarily for acute treatment purposes.

In 1974, Congressional review and criticism of the CHAMPUS experience with RTCs resulted in the dedication of substantial resources and effort to monitor RTC care to assure conformance with the Program's mandate to cover only medically necessary services and supplies in the treatment of metal conditions. Ongoing management problems which did not appear amenable to resolution and a growing concern about the type of case being admitted to RTCs resulted in a policy review by the Office of the Assistant Secretary of Defense (Health Affairs). The result of this review has been to conclude that from a legal, management and program integrity standpoint, it is in the best interests of CHAMPUS that RTC care be terminated as a benefit.

Current benefits for other psychotherapeutic treatment modalities—i.e., inpatient psychiatric hospital and outpatient psychotherapy—would continue to be available under CHAMPUS. Also, many residents of RTCs may be eligible for assistance through other nonmedical federal and state programs.

The elimination of RTC care would be effective on October 1, 1981. In order to provide for an orderly transition, CHAMPUS would approve no admissions to RTCs which begin on or after the effective date of this amendment. For those approved admissions which began prior to October 1, 1981, benefits would be continued until the date the RTC level of care is no longer necessary, or October 1, 1982, whichever occurs first. After October 1, 1982, no benefits would be available for RTC care.

This amendment is being published for proposed rulemaking at the same time as it is being coordinated within the Department of Defense, with the Department of Health and Human Services, the Uniformed Services and other interested agencies in order that consideration of both internal and external comments and publication of the final rulemaking can be expedited.

PART 199—IMPLEMENTATION OF THE CIVILIAN AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

Accordingly, it is proposed to amend 32 CFR, Chapter I, as follows:

1. Section 199.8(b) is amended as follows:

a. By revising the definition (125) of "Other Specialized Treatment Facilities (STFs)";

b. By removing the definition (155) of "Residential Treatment Centers for Emotionally Disturbed Children [RTCs]" and redesignating that paragraph as "reserved";

c. By removing the definition (157) of "RTC" and redesignating that paragraph as "reserved," reading as follows:

§ 199.8 Definitions.

* * * * *

(b) * * *

(125) *Other Specialized Treatment Facilities (STFs).* "Other Specialized Treatment Facilities [STFs]" means certain specialized medical treatment facilities either inpatient or outpatient, other than those specifically defined, which provide courses of treatment prescribed by a doctor of medicine or osteopathy; where the patient is under the supervision of a doctor of medicine or osteopathy during the entire course of the inpatient admission or the outpatient treatment; where the type and level of

care and services rendered by the institution are otherwise authorized in this regulation; where the facility meets all licensing and/or other certification requirements which are extant in the jurisdiction in which the facility is geographically located; and which is accredited by the Joint Commission on Accreditation if an appropriate accreditation program for the given type of facility is available; and which is not a residential treatment center; and which is not a nursing home, intermediate care facility, home for the aged or other institution of similar purpose.

* * * * *

(155) [Reserved]

(156) *Retiree.* * * *

(157) [Reserved]

* * * * *

2. Section 199.10 is amended as follows:

a. By removing the "Example" which immediately follows (b)(1)(ii) (*d*)(*5*);

b. By removing the "Note" which immediately follows (b)(1)(ii)(*d*)(*6*).

c. By removing the reference to "Residential Treatment Centers" (b)(*3*);

d. By removing (b)(4)(i) through (vi) and designating (b)(4) as "reserved";

e. By revising (g)(75);

f. By designating the NOTE following (g)(75) as NOTE 1.

g. By adding NOTE 2 following (g)(75), reading as follows:

§ 199.10 Basic program benefits.

* * * * *

(b) *Institutional benefits.* * * *

(1) *General.* * * *

(ii) *Preauthorization.* * * *

(*d*) *Other preauthorization requirements.* * * *

(*5*) A preauthorization may set forth other special limits or requirements as indicated by the particular case and/or situation for which the preauthorization is being issued.

(*6*) All preauthorization requests are responded to in writing and notification of approval or denial is sent by certified mail to the beneficiary (or sponsor) and, where applicable, to the provider.

* * * * *

(3) *Covered services and supplies provided by special medical treatment institutions and/or facilities, other than hospitals.* * * *

(4) [Reserved]

* * * * *

(g) *Exclusions and limitations.* * * *

(75) *Institutions.* Services and supplies provided by other than a hospital unless the institution has been specifically approved by OCHAMPUS. Residential treatment centers are excluded from consideration as approved facilities under the CHAMPUS Basic Program. Also excluded are nursing homes, intermediate care facilities, halfway houses, homes for the aged or institutions of similar purpose.

Note 1.—In order to be approved under CHAMPUS an institution must, in addition to meeting CHAMPUS standards, provide a level of care for which CHAMPUS benefits are payable.

Note 2.—With respect to residential treatment center care, those admissions approved prior to October 1, 1981, will continue to be covered until the RTC care is no longer necessary or until October 1, 1982, *whichever occurs first.*

3. To amend § 199.12 as follows:

a. By removing (b)(4)(v)(*a*) and (*b*) and designating (b)(4)(v) as "reserved";

b. By adding a new paragraph (viii)(a)(*5*) and redesignating (*5*) and (*6*) as (*6*) and (*7*), reading as follows:

§ 199.12 Authorized providers.

(b) *Institutional providers.* * * *

(4) *Categories of institutional providers.* * * *

(v) Reserved.

* * * * *

(viii) *Other Specialized Treatment Facilities (STFs).*

(a) * * *

(*5*) Is other than a residential treatment center.

(*6*) Is other than a nursing home, intermediate care facility, home for the aged, halfway house, or other institution of similar purpose.

(*7*) Is accredited by the Joint Commission on Accreditation or other CHAMPUS-approved accreditation organization, if an appropriate accreditation program for the given type of facility is available. As future accreditation programs are developed to cover emerging specialized treatment programs, such accreditation will be a prerequisite to coverage by CHAMPUS for services provided by such facilities.

* * * * *

Appendix A [Removed]

4. By removing Appendix A, "Champus Standards for Psychiatric Residential Treatment Centers Serving Children and Adolescents" in its entirety.

M. S. Healy,

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

July 28, 1981.

[FR Doc. 81-22362 Filed 7-30-81; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[A-1-FRL-1897-5]

State and Federal Administrative Enforcement of Implementation Plan Requirements After Statutory Deadlines; Delayed Compliance Order for Holyoke Water Power Company's Mt. Tom Generating Station

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to issue an administrative Order to Holyoke Water Power Company, allowing the single boiler of its Mt. Tom Generating Station, located in Holyoke, Massachusetts to be converted from burning oil to burning coal. The increased emissions caused by coal burning will mean that the company will be unable to comply with the Massachusetts State Implementation Plan (SIP) until February 15, 1984. Between the effective date of the order and February 15, 1984, the company will be allowed to burn coal despite this noncompliance. During this interim period, however, the company must install the pollution control equipment necessary to achieve final compliance with the Massachusetts SIP. This order sets forth a compliance schedule, emissions limitations, and other requirements of Section 113(d)(5) of the Clean Air Act.

DATE: Oral and written comments may be presented at a public hearing schedled for August 25, 1981; written comments may be submitted to EPA Region I at the address below. EPA will consider all comments received by September 4, 1981.

ADDRESSES: The public hearing will start at 7:00 pm in Room B271, Building B, Holyoke Community College, Holyoke, Massachusets. Those presenting oral testimony at the hearing are requested also to submit written copies of their testimony to EPA. Written comments may be submitted to: Arnold Leriche, U.S. Environmental Protection Agency, Region I, Room 1903, J.F.K. Federal Building, Boston, Massachusetts 02203. Copies of Holyoke Water Power Company's request for a Delayed Compliance Order, supporting documentation, and EPA's technical evaluation of this submittal, are available for public inspection during normal business hours from July 31 to September 4, 1981 at the above address and at the Pioneer Valley Air Pollution

Control District, 3rd floor, 1414 State Street, Springfield, Massachusetts 01101.

FOR FURTHER INFORMATION CONTACT: Arnold Leriche or Linda Murphy at the U.S. Environmental Protection Agency, Region I, Room 1903, J.F.K. Federal Building, Boston, Massachusetts 02203 or telephone (617) 223–4448.

SUPPLEMENTARY INFORMATION: On May 21, 1981 the Holyoke Water Power Company (HWPC), a subsidiary of Northeast Utilities, requested a Delayed Compliance Order (DCO) under Section 113(d)(5) of the Clean Air Act (the Act), 42 U.S.C. 7413(d)(5), to enable it to burn coal in the single 145 megawatt generating unit of its Mt. Tom Generating Station in Holyoke, Massachusetts. HWPC proposed an immediate conversion from oil to coal burning and stated that this would cause temporary noncompliance at Mt. Tom with the following regulations contained in the EPA approved Massachusetts Implementation Plan:

310 CMR 7.02(8)—limiting particulate emissions to 0.12 pounds per million Btu heat input;

310 CMR 7.05(4)—limiting the ash content of fossil fuels to 9% dry weight and;

310 CMR 7.06—limiting visible emissions to 20% opacity, except up to 40% for no more than 6 minutes in any hour.

The terms of the DCO EPA is proposing today, especially those regarding particulate emissions, are more stringent than those proposed by HWPC. EPA's proposal is designed to accommodate an immediate and commercially beneficial conversion to coal burning at Mt. Tom while protecting the public health. EPA invites comments on all aspects of the proposed DCO, and in particular, encourages comment regarding the proposed particulate emission rates for coal burning and the extent to which EPA's requirements are reasonable and practicable. Major issues are discussed below. More detailed analysis is provided in EPA's technical evaluation memoranda which, as previously stated, are available for public inspection. EPA's technical evaluation consists of EPA Region I technical memoranda and technical information from a private consulting firm hired by Northeast Utilities to evaluate the effectiveness of HWPC's proposed pollution control measures.

Eligibility

Air pollution sources are eligible for DCO's under Section 113(d)(5) of the Act if the following conditions are met:

(1) The air pollution source is a major one;

(2) The source currently burns oil or natural gas or both;

(3) The source is prohibited from burning these fuels by a U.S. Department of Energy (DOE) order under either the Energy Supply and Environmental Coordination Act (ESECA) or the Power Plant and Industrial Fuel Use Act;

(4) The source will be unable to meet air pollution requirements of the Massachusetts Implementation Plan if it converts to coal burning; and

(5) The source is in an attainment area for the pollutant covered by the DCO, or, if it is in a nonattainment area for the pollutant involved:

(a) Source emissions of the pollutant only infrequently impact air quality concentrations,

(b) Source emissions of the pollutant have an insignificant effect on air quality concentrations, and;

(c) Source emissions of the pollutant do not cause or contribute to primary NAAQS violations.

These three conditions comprise the "regional limitation" which is a rebuttable presumption; that is, a source is presumed to be ineligible for an order unless it can show with suitable air quality analyses that its emissions when burning coal satisfy these three conditions.

The Mt. Tom Generating Station currently burns residual oil and emits an estimated 370 tons per year of particulate matter and 7500 tons per year of sulfur dioxide (SO_2), thereby satisfying the first and second eligibility conditions.

Concerning the third eligibility condition, on June 30, 1977, under the provisions of ESECA, the Federal Energy Administration (DOE's predecessor) issued a prohibition order to HWPC for the Mt. Tom Generating Station. This prohibition order does not become final until DOE has issued a Notice of Effectiveness (NOE). It is EPA's policy that a source which has not been issued a final prohibition order is eligible for a DCO if DOE makes a commitment that it will continue to work toward finalization of the order that provided the basis for the DCO. Communications between EPA and DOE have indicated that DOE's work towards issuance of an NOE is progressing well.

Concerning the fourth eligibility condition, the existing dust collector system (multiclone/electrostatic precipitator combination) was not designed to meet the state particulate limit of 0.12 pounds per million Btu heat input under coal burning. Along with the increase of particulate emissions, visible emissions also would increase to levels above the currently allowed 20% opacity limit.

The specifications for the coal that HWPC intends to burn at Mt. Tom include 1.21 pounds of sulfur per million Btu heat input (monthly average) and 10% ash (as received for each trainload). The Massachusetts Department of Environmental Quality Engineering (DEQE) interprets the state sulfur regulation as a 30-day "rolling" average. The coal HWPC proposes to use complies with the state sulfur regulation; therefore, this DCO does not address sulfur dioxide (SO_2) emissions. DEQE interprets the state regulation limiting coal to 9% ash to apply on a dry basis to each cargo of coal. The coal HWPC proposes to use clearly does not meet this limit HWPC has not provided EPA with documentation to show that it cannot obtain other coal which complies with the state ash regulation. Therefore EPA proposes that the existing ash regulation shall remain in force throughout the DCO period. During this comment period, EPA will accept any additional information which may document HWPC's inability to comply with thjs state ash regulation during a portion or all of the DCO period. Should any such documentation submitted prove persuasive, EPA may permit non-compliance with the state ash regulation in the final DCO.

Regarding the fifth eligibility condition, Mt. Tom is located in the Massachusetts portion of the Hartford-New Haven-Springfield Interstate Air Quality Control Region where violations of the annual primary NAAQS for total suspended particulates (TSP) were recorded during the calendar years 1977, 1978 and 1979. HWPC submitted an air quality analysis to rebut the resulting regional limitation. Based on this submission, EPA made a preliminary determination that the regional limitation was successfully rebutted. EPA subsequently held a public hearing on June 9, 1981 in Holyoke, Massachusetts to receive comments regarding the proposed rebuttal of the regional limitation. None of the comments received opposed EPA's proposal to accept HWPC's rebuttal of the regional limitation. After considering all submissions and comments presented, EPA has determined that the regional limitation has been successfully rebutted, and if all other requirements of the Act are met, a DCO may be issued.

As detailed in EPA's public hearing record for the regional limitation, the rebuttal was made using dispersion modeling that conforms to the requirements of EPA's *Guideline on Air*

Quality Models. In the simple terrain areas within the influence of Mt. Tom, where the height of the terrain is less than the stack top, the EPA refined model "ISC" was used. For the nearby complex terrain areas, HWPC used it proprietary model, "AQPGM." The use of this model is further discussed later in this preamble.

At the public hearing, Northeast Utilities, on behalf of HWPC, made a statement which reiterated its position that its modeling demonstration successfully rebutted the regional limitation. In addition to Northeast Utilities, one other commentor delivered statements at the public hearing. This commentor stated that he was not opposed to the coal conversion in general. He recommended, however, that sampling and analysis of the ambient air be conducted for materials which may be carcinogenic, mutagenic and teratorgenic. This subject may be of concern regarding the conversion of this power plant to coal, but it does not pertain to a determination as to the adequacy of the regional limitation rebuttal. EPA will consider this comment, however, during the comment period for the DCO being proposed today. With regard to the commenfor's recommendation that TSP and SO_2 monitoring be conducted on the Mt. Holyoke and Mt. Tom ridge complexes, EPA has decided to require such monitoring, and is proposing such monitoring as a condition of this DCO.

Requirements of the Order

In addition to establishing the eligibility of a source for a DCO, EPA must identify the terms and conditions that will apply to a source while it operates under the DCO. Among the requirements that Section 113(d) of the Act places on these orders are the following:

(A) Primary Standard Conditions, 113(d)(5)(B)—emission limits, coal specifications, or other enforceable measures which assure that coal burning during the DCO does not cause or contribute to violations of the primary National Ambient Air Quality Standards (NAAQS).

(B) Compliance Schedules, 113(d)(6)—a schedule which requires compliance with all postponed air pollution requirements as expeditiously as practicable, but in no event later than December 31, 1985.

(C) Interim Requirements, 113(d)(7)—the best practicable systems of emission reduction (BPSER) which EPA determines are reasonable and practicable for minimizing noncompliance with state air pollution regulations postponed during the DCO.

A. Primary Standard Conditions

(1) *Compliance With Primary NAAQS for TSP*

Under Section 113(d)(5)(B) of the Act, 42 U.S.C. 7413(d)(5)(B), EPA is required to include enforceable measures in a DCO which will ensure that the burning of coal by the source does not cause violations of the primary NAAQS.

The Mt. Tom Generating Station is located on the valley floor of the Connecticut River basin. The plant is flanked by two mountain ridges. The Mt. Holyoke Ridge, with an east to west orientation, is located to the northeast, and the Mt. Tom ridge, with a southwest to northeast orientation, is located to the west and southwest of the plant. The plant is located just south of the gap where the Connecticut River separates the two ridges, with Mt. Nonotuck to the west and Mt. Holyoke to the east. The ridges are narrow and quite distinct, with terrain rising sharply to elevations 400–500 feet above stack top. On both sides of each ridge, the Connecticut River Valley is broad and generally flat with some low rolling hills.

HWPC predicted air quality concentrations for TSP in the surrounding low terrain areas using the ISC model, one of EPA's recommended models for such terrain. All nearby major stationary sources with potential impact in the area were included in this impact analysis; additional background levels were derived from nearby ambient monitoring data; three years of on-site meteorological data and a maximum emission rate for particulate matter equivalent to 0.48 pounds per million Btu's were input to the analysis. The ISC modeling showed no standards violation.

For complex terrain, the EPA modeling guideline does not recommend any refined model for general use. EPA's "VALLEY" model is the recommended screening model for use in such areas. EPA uses VALLEY unless a refined model is demonstrated to be more appropriate for a specific case. Another screening model, "COMPLEX I", currently is being considered by EPA for general use as an additional screening model for complex terrain where suitable on-site meteorological data is available. The COMPLEX I model is similar to the VALLEY model in many of its terrain-handling features, but unlike the VALLEY model, it uses observed meterological data.

These EPA screeing models indicated a potential for NAAQS violations in the high terrain for TSP. However, both VALLEY and COMPLEX I overpredicted ambient levels by an order of magnitude when compared to the actual monitoring data collected on Mt. Holyoke. As a result, HWPC asked EPA to accept the results of its AQPGM model for the high terrain surrounding the plant. The AQPGM model uses hourly meteorological data collected on-site to prepredict air quality concentrations in contrast to the VALLEY model which uses assumed worst case meterological conditions.

EPA has accepted HWPC's demonstration of compliance with primary NAAQS for TSP and SO_2 using the ISC and AQPGM models. The use of the AQPGM model in the complex terrain areas around Mt. Tom is approved for this specific application at this specific site only. This approval is based on more favorable comparisons between ambient data collected on Mt. Holyoke and model predictions at this location using the AQPGM model versus the VALLEY and COMPLEX I models

Primary NAAQS for SO_2

The DCO proposed today addresses only particulate emissions. HWPC is presently in compliance with the Massachustts sulfur-in-fuels limitation and no change in SIP compliance status is anticipated when the unit burns coal. An analysis of SO_2 impacts was made by EPA, however, using different models. The highest daily SO_2 plant impact on Mt. Holyoke was predicted at 882 micrograms per cubic meter using VALLEY, 1640 micrograms per cubic meter using COMPLEX I, and 47 micrograms per cubic meter using AQPGM. This compares to an observed maximum daily impact of approximately 50 micrograms per cubic meter using actual monitoring data, adjusted for background concentrations. EPA has concluded that, as in the case of TSP predictions, both VALLEY and COMPLEX I overpredicted ambient levels when compared to actual monitoring data.

Monitoring Requirements

Although EPA has accepted the HWPC modeling analysis as a demonstration of compliance with the primary NAAQS, EPA today proposes that HWPC establish an extensive air qualtiy and meteorological monitoring network as a requirement of the DCO. This network will further assure compliance with the primary NAAQS and will provide a data base for any possible future modeling evaluations in the area. Additionally, because TSP cannot be measured on a continuous basis, EPA also is requiring continuous monitoring of SO_2. Measurements of SO_2 can be correlated with TSP and SO_2

emission rates to estimate continuous TSP impacts.

The proposed network consists of seven monitoring locations each for TSP and SO_2 at eight different sites and three meteorological monitoring sites. Monitors in the low terrain, of which three would be new locations, were sited using ISC model predictions and population exposure criteria. Three high terrain air quality monitoring sites, of which two would be new sites, were located using results from the EPA VALLEY and COMPLEX I models. These high terrain sites are also located in the same vicinity as the highest AQPGM model predictions.

B. *Compliance Schedule.* In its May 21, 1981 DCO application, HWPC proposed a compliance schedule of 25 months from the date it starts burning coal. EPA beleives the schedule is expeditious. With minor modifications, EPA proposes approval of the Company's compliance schedule in this notice.

C. Interim Requirements. In its DCO application, HWPC proposed a particulate emission rate of 0.48 pounds per million Btu heat input, and requested to burn coal with an ash content in excess of the state 9% ash regulation for the duration of the DCO. In addition, HWPC agreed to correct all malfunctioning components of its dust collectors (i.e., multiclone in combination with an EPS) and upgrade the energization system (i.e., transformer-rectifier sets), operational controls, and rapping system components of the electrostatic precipitator. These conditions were developed jointly by DEQUE and HWPC. In its DCO application, HWPC also committed to install a flue gas conditioning system prior to initial burning of coal. HWPC presented definite plans to implement adequate operation and maintenance measures which should minimize particulate emissions beyond those required to ensure attainment with the primary NAAQS for TSP.

EPA concurs with HWPC's proposal that refurbished dust collectors coupled with a properly designed flue gas conditioning system appear to have the best potential for minimizing emissions during the DCO period. The refurbishment of the dust collector is expected to cost $1,500,000. The cost to install and operate a flue gas conditioning system is estimated at $25,000 annually. These costs are reasonable when contrasted with approximately $35,000,000 savings in fuel costs which the DCO will allow. Furthermore, under the Massachusetts "Oil Conservation Adjustment" legislation, the company will have approximately $23,000,000 annually available to it to pay for the total coal conversion, including costs associated with the DCO and taxes; the remaining savings are returned to consumers.

HWPC's proposed emission limit of 0.48 pounds per million Btu heat input was accepted by DEQE in a Memorandum of Understanding signed by HWPC and DEQE on March 6, 1980. EPA also accepts this emission rate for the initial stage of the DCO. However, EPA is proposing that a lower emission limit be achieved 8 months after initial burning of coal. EPA believes that an upgraded collection device together with optimized use of a flue gas conditioning system can reduce particulate emissions to 0.350 pounds per million Btu heat input. This limit reflects EPA's judgment as to what can be achieved with the upgraded collection devices and the use of flue gas conditioning, which EPA has determined to represent BPSER. The compliance schedule in the DCO gives HWPC 8 months to fully optimize operation of the flue gas conditioning system and show compliance with this emission limit.

EPA also is proposing that HWPC purchase coal with an ash content of no greater than 9% (dry weight) maximum average per coal cargo received at the plant as a means to minimize emissions. The availability of this type of coal and the reasonableness of this requirement are based on limited information; therefore EPA is requesting comments on this issue. Additional interim requirments are proposed to develop a new opacity limit and minimize fugitive particulate emissions.

A conversion from oil to coal burning generally will result in an increase in fugitive particulate emissions from storage and handling of large amounts of coal and coal flyash. While HWPC has not requested a DCO for fugitive particulate emissions, the DCO proposed today requires HWPC to submit a plan for minimizing such emissions. Fugitive emissions were not modeled in HWPC's air quality analysis due to the difficulty of quantifying and modeling such emissions. There are, however, compensating conservative assumptions in the estimates of background particulate concentrations. In any case, to the extent that there are potentially significant fugitive particulate emission increases, EPA believes that reasonable control measures should be required to avoid any air quality problem. The installation of a telescoping dust chute to the discharge point of the coal pile loading conveyor is specifically identified as only one of several potential reasonable control measures. EPA invites comments on this approach to controlling the increased fugitive emissions.

Statutory Authority

This Order is issued under Sections 113(d)(5) and 114 of the Clean Air Act (the Act), as amended, 42 U.S.C. 7413(d)(5) and 7414. This Order contains a compliance schedule, interim requirements, monitoring and reporting requirements and other requirements which satisfy the terms of these Sections of the Act. Public notice has been provided under Section 113(d)(1) of the Act, 42 U.S.C. 7413(d)(1), and a copy of this Order has been provided to the Governor of the Commonwealth of Massachusetts to seek his concurrence.

Findings

The Administrator of EPA (Administrator) makes the following findings:

1. The Holyoke Water Power Company (HWPC) owns and operates the Mt. Tom Generating Station (Mt. Tom) located in Holyoke, Massachusetts.

2. Mt. Tom is a major stationary source, having the potential to emit more than 100 tons per year of particulate and sulfur dioxide while using pollution control equipment.

3. Currently, the single unit at Mt. Tom burns residual oil.

4. On June 30, 1977, the Federal Energy Administration issued a prohibition order under the Energy Supply and Environmental Coordination Act, 15 U.S.C. 791 *et seq.* (1974), which prohibited Mt. Tom from burning oil. Currently, the U.S. Department of Energy (DOE) is preparing an Environmental Impact Statement (EIS) which is required prior to issuance of a Notice of Effectiveness.

5. An implementation plan to regulate air pollution in Massachusetts has been approved by the Administrator of EPA under Section 110 of the Act, 42 U.S.C. 7410.

6. 310 CMR 7.02(8) is part of the applicable state implementation plan (SIP) within the meaning of Section 113(d)(5) of the Act, 42 U.S.C. 7413(d)(5), and reads in pertinent part as follows:

> No person owning, leasing, or controlling the operation of any fossil fuel utilization facility shall cause, suffer, allow, or permit emissions therefrom in excess of those emission limitations set forth in the following tables (0.12 lbs. of particulate per million Btu heat input).

7. 310 CMR 7.06 is part of the applicable SIP within the meaning of

Section 113(d)(5) of the Act, 42 U.S.C. 7413(d)(5), and reads in part as follows:

(1) *From Stationary Sources Other than Incinerators*

(a) No person shall cause, suffer, allow, or permit the emission of smoke which has a shade, density, or appearance equal to or greater than No. 1 of the Chart (20%) for a period, or aggregate period of time in excess of six minutes during any one hour, provided that at no time during the said six minutes shall the shade, density, or appearance be equal to or greater than No. 2 of the Chart. (40%).

8. EPA has determined that Mt. Tom will be unable to meet the requirements of 310 CMR 7.02(8) and 7.06 if the units convert to coal burning.

9. Mt. Tom is located in the Hartford-New Haven Springfield Interstate Air Quality Control Region where the violations of the annual primary National Ambient Air Quality Standard (NAAQS) for total suspended particulates (TSP) were recorded during calendar years 1977, 1978, and 1979. After public notice and a public hearing, EPA has determined that HWPC has made the necessary showing under Section 113(d)(5)(D) of the Act, 42 U.S.C. 7413(d)(5)(D), that particulate emissions from coal will not significantly cause or contribute to NAAQS violations.

10. The Administrator has determined that the emission limits, requirements respecting pollution characteristics of coal and other enforceable measures contained in the following Order are sufficient to assure that the burning of coal at Mt. Tom will not result in emissions which cause or contribute to concentrations of any air pollutant in excess of any national primary ambient air quality standard (NAAQS) for such pollutant.

11. The Administrator also has determined that the compliance schedule in the following Order requires compliance with 310 CMR 7.02(8) and 7.06 as expeditiously as practicable.

12. Furthermore, the Administrator has determined that the Interim Requirements of the following Order require the best practicable systems of emission reduction (BPSER) to protect the public health and minimize noncompliance with 310 CMR 7.02(8) and 7.06.

Therefore, if this Order is issued by EPA, 40 CFR Part 55 would be amended by adding to Subpart W—Massachusetts, § 55.472 *Delayed Compliance Order.*

Based on the foregoing findings, it is hereby ordered:

I. SIP Limitation

Under this Order, the Mt. Tom generating unit owned by Holyoke Water Power Company (HWPC) shall comply with the interim emission limits, compliance schedules, and other enforceable requirements set forth in this Order. The emission limits contained in this Order are authorized only until HWPC can install the necessary pollution control equipment to achieve compliance with 310 CMR 7.02(8) and 7.06(1) of the Massachusetts SIP while burning coal at Mt. Tom. The Order contains a compliance schedule which sets a final compliance date by which HWPC's Mt. Tom generating unit must achieve compliance with all requirements of the SIP.

II. Interim Requirements

EPA has determined that the following interim requirements ensure that burning coal at Mt. Tom will not cause or contribute to violations of the NAAQS for TSP:

A. (1) Prior to burning coal at Mt. Tom, HWPC shall refurbish the existing dust collector to its original design specifications and install four new transformer rectifier sets, as specified in HWPC's May 21, 1981 submittal to EPA.

(2) Not later than 15 days before initial burning of coal, HWPC shall notify EPA that the dust collector has been refurbished.

B. (1) Prior to initial burning of coal at Mt. Tom, HWPC shall install a flue gas conditioning system to enhance the collection efficiency of its electrostatic precipitator.

(2) The flue gas conditioning system shall be fully operational prior to emission testing on the source as required in II(E) of this Order.

C. Not later than 7 days before initial burning of coal at Mt. Tom, HWPC shall submit to EPA written notice of the date it intends to start burning coal in the unit.

D. (1) HWPC shall burn coal at Mt. Tom with an ash content not in excess of 9% by weight (dry basis) for each shipment received.

(2) Coal shall be sampled for ash content according to the requirements of IV(B)(1) of this Order.

E. (1) Upon initial burning of coal at Mt. Tom, HWPC shall not emit particulate matter at a rate in excess of 0.480 pounds per million Btu gross heat input.

(2) HWPC shall conduct a particulate emission test on the unit within 45 days of initial burning of coal, to demonstrate compliance with this emission limit.

F. (1) Within 30 days after initial coal burning at Mt. Tom, HWPC shall submit to EPA a preliminary plan to optimize particulate emission reduction from operating the flue gas conditioning system.

(2) In addition, HWPC shall submit to EPA monthly status reports on the implementation of this plan.

G. (1) Within 120 days after initial coal burning, HWPC shall submit to EPA a final plan to optimize particulate emission reduction from operating the flue gas conditioning system. Upon approval by EPA, this final plan shall become enforceable under this Order.

(2) Within 150 days after initial burning of coal, HWPC shall conduct a particulate test on the unit in accordance with IV(A)(3) of this Order to demonstrate optimization of the flue gas conditioning system.

H. (1) Within 240 days after initial burning of coal at Mt. Tom under this Order, particulate emissions from the unit shall not exceed 0.350 pounds per million Btu gross heat input and HWPC shall conduct a particulate emission test on the unit to demonstrate compliance with this emission limit by this time.

I. Within 30 days after completing each set of particulate emission tests required by II (E) and (H) above, HWPC shall submit to EPA a report which correlates visible emissions as determined by EPA Method 9 (40 CFR Part 60, Appendix A) as a function of particulate emissions from coal burning.

(1) Each report shall propose an enforceable visible emissions opacity limit for the unit.

(2) EPA shall set an opacity limit for enforcement under this Order within 30 days of receipt of each report. EPA may require HWPC to submit additional visible emissions data under IV(A)(5) of this Order, and may use the additional data to revise opacity limits applicable to coal burning under this Order.

(3) Each report also shall propose an opacity monitor reading which correlates with particulate emissions from coal burning.

(4) Within 30 days of receipt of each report, EPA shall set an opacity monitor reading which will be used as an indicator of continuous compliance with the emission limits of this Order.

J. Within 30 days of the effective date of this Order, HWPC shall submit for approval by EPA a detailed program for minimizing fugitive particulate emissions from coal and coal ash handling.

(1) This program shall include as as minimum, HWPC's commitment to install a telescoping dust chute at the discharge point of the coal pile loading conveyor prior to initial coal burning.

(2) This program, including an implementation schedule shall become a fully enforceable term of the Order.

III. Compliance Schedule

A. HWPC shall comply as expeditiously as practicable with the requirements of 310 CMR 7.02(8) and 7.06(1) or any superceding Massachusetts regulations as approved by EPA. In no event, however, shall compliance be achieved later than the dates specified in the following compliance schedule:

1. Not later than December 31, 1981, HWPC shall enter into contracts for the design, fabrication, and installation of particulate emission controls or other equipment which is necessary for the unit to achieve final compliance with 310 CMR 7.02(8) and 7.06(1) or any superceding Massachusetts regulations as approved by EPA prior to this date.

2. Not later than January 31, 1983, HWPC shall initiate on-site construction for installation of the continuous particulate emission control systems.

3. Not later than December 31, 1983, HWPC shall complete the installation of the continuous particulate emission control systems.

4. Not later than February 15, 1984, or within 45 days of completing installation of the continuous particulate emission control systems, HWPC shall perform particulate emission tests to demonstrate compliance with 310 CMR 7.02(8) and 7.06(1) or such superceding Massachusetts regulations as approved by EPA.

B. HWPC shall submit to EPA, no later than 15 days after each calendar quarter, calendar quarterly reports which outline its progress in meeting all the compliance milestones listed above. The first such report is due April 15, 1982.

C. In the event HWPC is unable to comply with any of the schedule increments established in III(A) above, and such failure is due to an Act of God, war, strike or other such causes beyond its control, HWPC may petition EPA to extend the time for compliance with such schedule increment and all subsequent schedule increments by a period equal to the delay caused by such circumstances. HWPC shall bear the burden of proving that a delay is caused by circumstances clearly beyond its control. Any delay that is caused by such circumstances shall not be deemed a violation of this Order. In no event, however, shall final compliance be achieved later than December 31, 1985.

IV. Monitoring and Reporting Requirements

A. Emissions Monitoring and Reporting Requirements

1. All particulate emission testing shall be conducted in accordance with Reference Method 5, 40 CFR Part 60, Appendix A, under operating conditions approved by EPA and in the presence of EPA personnel or EPA representatives.

(a) HWPC shall provide safe access to a safe sampling platform on the unit to be tested.

(b) For the purposes of this Order, a particulate emission test shall consist of four Method 5 sampling runs. One of the four runs shall be conducted during the normal boiler sootblowing cycle, and three runs shall be conducted without sootblowing.

(c) The average emission rate for a particulate emission test shall consist of the arithmetic average of the three non-sootblow runs prorated in a manner specified by EPA to account for the change in emission encountered during the sootblow run.

2. For any emission or performance specification testing under this Order:

(a) HWPC shall submit a pretest report to EPA at least 30 days before the proposed test date for the unit.

(b) No fewer, than 5 days before HWPC conducts any such test, EPA shall meet with appropriate HWPC personnel and any representatives of the contractor responsible for the preformance of the tests to discuss and finalize the testing protocol.

(c) HWPC shall submit a written emission test report to EPA within 30 days of completing any EPA required emission testing.

(d) Pretest reports and emisson test reports shall contain information as required by EPA and shall be presented in format specified by EPA.

3. Within 150 days of initial burning of coal at Mt. Tom, HWPC shall perform emission tests on the unit as equipped with flue gas conditioning as follows:

(a) Two sets of tests shall be performed on the unit; one set while the flue gas conditioning system is operating, and one set while it is not operating.

(b) Each set of tests shall include:

(i) One particulate emission test of four runs conducted in accordance with EPA Method 5, 40 CFR Part 60, Appendix A.

(ii) At least 8 acid sulfate measurements in accordance with a method specified by EPA.

(iii) At least 8 sulfur dioxide measurements using EPA Method 6, 40 CFR Part 60, Appendix A.

(c) All acid sulfate and sulfur dioxide measurements shall be made during the approximate duration of the particulate testing.

(d) Each acid sulfate measurement shall be performed simultaneously with a sulfur dioxide measurement.

(e) The same type of coal shall be burned during both sets of tests.

(f) The boiler load, sootblowing operations and the amount of excess air shall be the same for both sets of tests.

(g) Both sets of tests shall be made while the unit and its electrostatic precipitator are operating under normal operating conditions.

(h) For any set of tests performed with flue gas conditioning, the flue gas conditioning system shall be operated in a manner specified by EPA.

(i) The tests with conditioning agents shall be preceded by at least 10 days of operation with conditioning agents to allow the precipitator to stabilize. Similarly, the tests without conditioning agents shall be preceded by at least 10 days of precipatator operation without conditioning agents.

(h) Each set of tests also shall be subject to the requirements of IV(A)(2) of this Order.

(i) If the approximate composition or usage rate of the conditioning agent changes at any time during the life of this Order, HWPC shall notify EPA in writing within 15 days of the change. If such change occurs after HWPC has performed the testing detailed above, EPA may require additional tests. If EPA decides to require such additional tests, HWPC shall be notified in writing. HWPC shall perform the additional tests within 30 days of receipt of the written notice.

4. HWPC shall install and operate continuous opacity monitoring equipment before burning coal in the unit.

(a) HWPC shall demonstrate that its opacity monitors comply with performance specifications within 30 days after initial burning of coal at Mt. Tom. HWPC shall comply with the provisions of 40 CFR Part 51, Appendix P, and the performance specification test requirements cross-referenced under 40 CFR Part 60, Appendix B. If two or more opacity monitors are used to report opacity from the boiler, HWPC shall submit to EPA for approval, an acceptable method for correlating each monitor to the total opacity at the stack outlet. HWPC shall notify EPA 10 days before removing any monitor from its location. This notification also shall include data which demonstrates that the new location for the monitor or its replacement meets the requirements of 40 CFR Part 60, Appendix B. Additionally, the mnitor or its replacement shall be completely recertified according to 40 CFR Part 60, Appendix B before it is reinstalled. Data demonstrating recertification shall be provided to EPA upon request.

(b) Not later than 30 days prior to initial start-up of the continuous opacity monitoring equipment, HWPC shall submit to EPA an approvable quality assurance program for the monitoring system.

(c) HWPC shall report to EPA on a monthly basis, all hourly average opacity readings for each opacity monitor which exceed the limits set by EPA under II (I) of this Order. These summary reports shall be submitted to EPA within 15 days of the end of each month; records of all hourly average opacity readings shall be retained at Mt. Tom for inspection for the duration of this Order.

B. Coal Monitoring and Reporting Requirements

Within 30 days of the effective date of this Order, HWPC shall submit an approvable fuel monitoring plan to EPA. As a minimum, such plan shall include a

commitment on the part of HWPC to do the following:

1. HWPC shall perform proximate analyses of all coal cargoes off-loaded at Mt. Tom.

(a) ASTM D 3172 shall be used for the performance of the proximate analyses.

(b) ASTM D 2234 sampling with systematic spacing shall be used for sample increment collection.

2. HWPC shall perform daily coal sampling and analyses for sulfur content, ash content, and gross calorific value for coal burned under this Order.

(a) ASTM D 2234 sampling with systematic spacing shall be used for sample increment collection.

(b) Table 2 of paragraph 7.1.5.2 of ASTM D 2234 shall be used to determine the minimum number of increments and the minimum weight of each increment. Such increments from all conveyors are to be composited for analysis on a daily basis.

(c) ASTM D 2103 shall be used for sample preparation.

(d) ASTM D 3177 shall be used for sulfur analysis. ASTM D 3174 shall be used for ash analysis.

(e) ASTM D 2015 or ASTM D 3286 shall be used for gross calorific value determinations.

3. HWPC shall participate in the EPA coal analysis methods audit program conducted by the Quality Assurance Division, Environmental Monitoring Systems Laboratory in Research Triangle Park, North Carolina. Coal audit samples shall be analyzed according to ASTM procedures for percent sulfur, moisture, ash content and gross calorific value and will be provided by EPA on a periodic basis.

4. Monthly reports containing coal cargo shipment sizes, coal cargo analyses, and daily coal analyses shall be submitted to EPA within 15 days of the close of each month in a format approved by EPA.

(a) Such reports also shall contain 30-day "rolling average" sulfur content values for the coal burned calculated for each day of the month.

(b) The results of any audit coal sample analyses performed during that month also shall be included.

(c) All coal analysis data will be presented on a dry basis.

5. HWPC shall submit to EPA on a monthly basis hourly average net megawatts generated for the unit. Monthly data shall be reported within 15 days of the end of each month in a format approved by EPA.

6. HWPC shall perform any additional testing required by EPA within 30 days of receipt of written notification of such requirement. Among other things, additional testing may be required to quantify changes in emissions due to such factors as changes in coal characteristics, changes in boiler or precipitator operation.

Additional tests also may be required to quantify suspected changes in emissions indicated by frequent opacity exceedences. Any proposal made by HWPC to limit total station emissions by derating the generating unit may result in additional testing requirements for the unit at any proposed generation levels.

7. HWPC shall maintain a logbook, available for inspection by EPA, containing the following data for the electrostatic precipitator:

(a) HWPC shall log secondary voltage, secondary current, and spark rate every 4 hours while the unit is burning coal.

(b) HWPC shall log voltage current relationships across the transformer rectifier set's operating range every 15 days for the first 60 days after initial burning of coal in the unit. Thereafter, the data shall be logged every 30 days for the duration of this Order.

C. Ambient Monitoring and Reporting Requirements

1. (a) Within 60 days of the effective date of this Order but in no case later than the start of coal burning, HWPC shall install and operate a network of ambient monitors to measure sulfur dioxide (SO_2) concentration on a continuous basis, and TSP concentration on a frequency as specified in IV(C)(2) below.

(b) As a minimum, HWPC shall place monitors for the following pollutants near each of the locations specified below:

i. Summit House, Mt. Holyoke Range bordering Hadley and South Hadley; TSP and SO_2.

ii. Approximately 0.6 km southwest of Summit House approximately 750 feet above mean sea level, Mt. Holyoke Range bordering Hadley and South Hadley; TSP and SO_2.

iii. Northampton area, Northampton; TSP and SO_2.

iv. Pine Street, South Hadley; TSP and SO_2.

v. Smith's Ferry, Holyoke; TSP and SO_2.

vi. Goat Peak, Mt. Tom range, Holyoke; TSP and SO_2.

vii. Mt. Tom coal pile (to measure fugitive impacts), Holyoke; TSP.

viii. Mt. Tom Stack base, Holyoke; SO_2.

(c) The burning of coal at Mt. Tom under this Order constitutes acceptance by HWPC that ambient monitoring data collected on its property is representative of ambient air quality levels in the surrounding area. EPA may use this data for enforcement or any other purpose as such under the Act.

2. The sampling frequency at the Northampton and Pine Street TSP sites shall be once every three days. The sampling frequency at all the remaining TSP sites shall be daily; however, the sampling frequency at a TSP monitoring site may be reduced to once every three days if the following conditions are met at such site during any continuous 365 day period after coal has been burned at Mt. Tom:

a. Every 24-hour TSP concentration measured at the site must be less than 200 micrograms per cubic meter, and;

b. The annual geometric mean of TSP measured at the site must be less than 60 micrograms per cubic meter.

3. All ambient monitoring locations and equipment installations must be approved by EPA prior to operation and must meet 40 CFR Part 58, Appendix B (Quality Assurance), Appendix C (Ambient Air Quality Monitoring Methodology), and Appendix E (Probe Siting Criteria).

(a) All SO_2 analyzers are to be operated on the 0.5 ppm range unless ambient air quality levels exceed this concentration. If this case occurs, then any such instrument must be operated on the appropriate higher range.

(b) Within 30 days of the effective date of this Order, HWPC shall submit in writing to EPA an approvable quality control program.

(c) EPA will accept performance audits by DEQE to satisfy the requirements for the quarterly accuracy audit (40 CFR Part 58, Appendix B, Section 3), but it will be HWPC's responsibility to provide independent performance audits for any calendar quarter not audited by DEQE.

4. Within 60 days of initial burning of coal, HWPC shall complete construction of meteorological towers and operate continuous monitoring instruments to measure wind speed and direction at Summit House, Goat Peak, and near Mt. Tom's stack.

(a) The exact location and height of these towers shall be selected by HWPC and shall be approved by EPA in writing before the towers are constructed.

(b) All meteorological instrumentation shall comply with EPA requirements as specified in EPA Guideline 450/4–80–012.

(c) All meteorological monitoring procedures must be submitted to EPA for approval at least 30 days before they are implemented.

5. HWPC shall obtain all the necessary permits, easements or permissions necessary to locate the monitors and meteorological towers required by IV(C)(1) and (4) of this Order. EPA may grant time extensions for monitor siting, select alternative sites, or eliminate sites altogether if HWPC can prove that is it impossible for it to get the necessary permits,

easements or permissions. HWPC shall carry the burden of proof for such a showing.

6. All monitoring and meteorological data shall be submitted to DEQE within 30 days of the close of each month in machine readable SAROAD format.

(a) The data reported to DEQE will be for individual hourly observations of SO_2, wind speed, and direction, as well as daily averages for TSP.

(b) HWPC shall insure that EPA receives the above information within 90 days of the end of each calendar quarter.

(c) HWPC shall notify EPA of any exceedence of any Primary National Ambient Air Quality Standard within 48 hours of receiving such data.

7. Within 30 days of the occurrence of any violation of the National Ambient Air Quality Standard for total suspended particulates, HWPC shall submit to EPA, all relevant data under Section 113(d)(5)(D) (i) through (iii) of the Act.

V. General Requirements

A. This Order shall not be effective during any interval after EPA finds and notifies HWPC that (1) a National Primary Ambient Air Quality Standard for total suspended particulates is being exceeded in the Hartford-New Haven-Springfield Interstate AQCR and (2) HWPC has failed to prove that the requirements of Sections 113(d)(5)(D)(i) through (iii) of the Act have been satisfied. During any such intervals, HWPC shall comply with 310 CMR 7.02(8) and 7.06(1) or any superseding Massachusetts regulations as approved by EPA. If HWPC violates these regulations, it shall be subject to enforcement action under Section 113 of the Act.

B. Nothing herein shall affect the responsibility of HWPC to comply with any other applicable local, state or federal regulations.

C. HWPC shall submit a copy of all correspondence and reports required under this Order to the Director, Enforcement Division, EPA, Region I, JFK Federal Building, Boston, MA 02203.

HWPC may assert a business confidentiality claim covering part or all of the information requested by this Order in the manner described by 40 CFR Part 2, Section 203(b). Information covered by such a claim will be disclosed by EPA only as set forth in 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to HWPC. Certain categories of information are not properly the subject of such a claim. For example, the Act provides that emission data shall in all cases be made available to the public. See 42 U.S.C. 7414(c).

D. HWPC is hereby notified that its failure to achieve final compliance at Mt. Tom with 310 CMR 7.02(8) and 7.06(1) by the final compliance date specified in III(A)(4) of this Order may result in an assessment of a noncompliance penalty under Section 120 of the Act, 42 U.S.C. 7240. This penalty may be imposed at an earlier date, as provided under Section 113(d) and Section 120 of the Act, in the event that this Order is terminated or violated as provided in V(E) and (F) below. In either event, HWPC will be formally notified of its noncompliance, under Section 120(b)(3) of the Act or any regulations promulgated thereunder.

E. This Order shall be terminated in accordance with Section 113(d)(8) of the Act if the Administrator determines, on the record, after notice and opportunity for hearing, that the inability of HWPC to comply with 310 CMR 7.02(8) and 7.06 as approved by EPA, no longer exists with respect to its Mt. Tom generating unit. Additionally, if HWPC demonstrates compliance with 310 CMR 7.02(8) and 7.06 prior to the final compliance date specified in III(A)(4) of this Order, then this Order shall be terminated at that earlier date.

F. Violation of any requirement of this Order shall result in one or more of the following actions:

1. Enforcement of such requirement under Section 113(a), (b), or (c) of the Act, 42 U.S.C. 7413(a), (b), or (c);

2. Revocation of this Order, after notice and opportunity for a public hearing;

3. Notification of noncompliance and assessment of a noncompliance penalty under Section 120 of the Act.

G. This order is effective July 31, 1981, and after having received concurrence from the Governor of the Commonwealth of Massachusetts.

The Administrator's decision to approve or disapprove this delayed compliance order will be based on whether it meets the requirements of Section 113(d)(5) and 113d (6)–(12) of the Clean Air Act, as amended. This delayed compliance order is being proposed pursuant to Section 113(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d)).

Dated: July 16, 1981.

Leslie Carothers,

Acting Regional Administrator, Region I.

[FR Doc. 81-22354 Filed 7-30-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 55

[A-1-FRL-1897-4]

State and Federal Administrative Enforcement of Implementation Plan Requirements after Statutory Deadlines; Proposed Delayed Compliance Order for New England Power Company's Salem Harbor Generating Station

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to issue an administrative order to the New England Power Company. If finalized, it would allow units 1, 2, and 3 of the Salem Harbor Generating Station, located in Salem, Massachusetts, to be out of compliance with certain requirements of the Massachusetts State Implementation Plan until December 1985 so that the Company can convert these units from burning oil to coal. While the increased emissions due to coal burning will mean that the units will be temporarily out of compliance with the State requirements, this order would, if finalized, require that during the interim, the Company must install the pollution control equipment necessary for it to burn coal cleanly in the long run, in full compliance with all requirements.

DATE: Oral and written comments may be presented at a public hearing scheduled for September 2, 1981; written comments may be submitted to EPA at the address below. EPA will consider all comments received by September 14, 1981.

ADDRESS: The public hearing will start at 7:00 pm at One Salem Green on Church Street in Salem, Massachusetts. Those presenting oral testimony at the hearing are requested to submit written copies of their testimony to EPA. Written comments should be submitted to: Brian Hennessey, U.S. Environmental Protection Agency, Region I, Room 1903 JFK Federal Building, Boston, Massachusetts 02203. Copies of New England Power Company's request for a Delayed Compliance Order, supporting documentation, and EPA's technical evaluation of this submittal are available for public inspection during normal business hours from July 31 to September 14, 1981 at the above address and at the Salem Planning Department, One Salem Green, Church Street, Salem, Massachusetts 01970.

FOR FURTHER INFORMATION CONTACT: Brian Hennessey or Linda Murphy at the Environmental Protection Agency,

Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; or telephone (617) 223-4449.

SUPPLEMENTARY INFORMATION: On April 15, 1981, the New England Power Company (NEPCO) requested a Delayed Compliance Order (DCO) under Section 113(d)(5) of the Clean Air Act (the Act), 42 U.S.C. 7413(d)(5), to enable it to burn coal in generating units 1, 2, and 3 of its Salem Harbor Generating Station in Salem, Massachusetts.

NEPCO proposed an immediate conversion from oil to coal burning and claimed this would cause temporary noncompliance with the following regulations contained in the EPA approved Massachusetts State Implementation Plan (SIP):

310 CMR 7.02(8)—limiting particulate emissions to 0.12 pounds per million Btu heat input;

310 CMR 7.05(4)—limiting the ash content of fossil fuels to 9% by dry weight; and

310 CMR 7.06—limiting visible emissions to 20% opacity, except up to 40% opacity for no more than 6 minutes in any hour.

The terms of the DCO that EPA is proposing today, especially those regarding particulate emission limitations, are more stringent than those proposed by NEPCO. EPA's proposal is designed to accomodate an immediate and commercially beneficial conversion to coal burning at Salem Harbor while protecting the public health. EPA invites comments on all aspects of the proposed DCO, and in particular, encourages public comment concerning the various particulate emission rates and the extent to which the corresponding pollution control requirements are reasonable and practicable. Major issues are discussed below. More detailed analysis is provided in EPA's technical evaluation which, as previously stated, is available for public inspection. EPA's technical evaluation consists of EPA Region 1 and EPA Office of Research and Development technical memoranda, as well as a report from a private consulting firm hired by EPA to evaluate pollution control options and compliance schedules pertaining to this Order.

Eligibility of the Source

Air pollution sources are eligible for DCO's under Section 113(d)(5)(A) of the Act if the following conditions are met:

(1) The air pollution source is a major one;

(2) The source currently burns oil or natural gas or both;

(3) The source is prohibited from burning these fuels by a U.S. Department of Energy (DOE) order under the Power Plant and Industrial Fuel Use Act (FUA);

(4) The source will be unable to meet air pollution requirements of the applicable SIP if it converts to coal burning; and

(5) The source is in an attainment area for primary standards for the pollutant covered by the DCO, or, if in a non-attainment area, meets certain statutory requirements.

Currently units 1, 2, and 3 of the Salem Harbor Generating Station burn residual oil and emit 150, 183, and 243 tons per year of particulate matter and 5,100, 4,180, and 10,320 tons per year of sulfur dioxide (SO_2), thus satisfying the first two eligibility conditions. Concerning the third condition, on April 3, 1980, DOE published a proposed order under the provisions of FUA which prohibited each of the three units from burning oil. A final prohibition order has not yet been issued. It is EPA's policy, however, that a source which has not been issued a final prohibition order is eligible for a DCO if DOE makes a commitment that it will continue to work toward finalization of any prohibition order which provided the basis for a DCO. On June 10, 1981, DOE published a Notice of Intent to Proceed on the Salem Harbor prohibition order (46 FR 30682), thus providing the necessary assurance for EPA to issue a DCO.

Regarding the fourth eligibility condition, the existing particulate control devices, electrostatic precipitators (ESP's), were not designed to meet the state particulate emission regulation limit of 0.12 pounds per million Btu heat input under coal burning. Emissions from coal burning, therefore, will violate this SIP regulation. Under coal burning, visible emissions also will increase to levels above the 20% opacity limit specified by state regulation. Additionally, NEPCO has approximately 70,000 tons of coal with a very high ash content (over 17%) on site. Since coal storage space at the plant is limited, NEPCO has requested a DCO which authorizes burning of this high ash ("old") coal to make room for lower ash ("new") coal. Under this proposal, NEPCO will be in violation of the applicable 9% ash regulation.

Concerning the fifth eligibility condition, the Salem Harbor Station is located in the Metropolitan Boston Air Quality Control Region which is an attainment area for primary NAAQS for total suspended particulates (TSP).

Requirements of the Order

In addition to establishing the eligibility of a source for a DCO, EPA must establish the terms and conditions which will apply to a source while it operates under that DCO. Among the requirements of the Act are the following:

(A) Primary Standard Conditions, 113(d)(5)(B)—emission limits, coal specifications, or other enforceable measures which assure that coal burning during the DCO does not cause or contribute to violations of the primary NAAQS.

(B) Compliance Schedules, 113(d)(6)—a schedule which requires compliance with all postponed air pollution requirements as expeditiously as practicable, but in no event later than December 31, 1985.

(C) Interim Requirements, 113(d)(7)—the best practicable systems of emission reduction (BPSER) which EPA determines are reasonable and practicable for the period during which the order is in effect.

A. Primary Standard Conditions. NEPCO requested particulate matter emission rates and operation limitations as follows:

Unit No.	Maximum net generation from coal burning (megawatts)	Particulate emission from coal burning (pounds per million Btu)
Case I: [1]		
1	[2] 0	0.0
2	64	1.0
3	100	1.0
Case II: [3]		
1	76	0.67
2	76	0.67
3	148	0.85
Case III: [4]		
1	81	0.77
2	81	0.77
3	148	0.85

[1] Unit 2 or 3 burns old coal at any time.
[2] Always burns oil or off-line.
[3] All 3 units burn new coal.
[4] Any 2 units burn new coal, the third unit burns oil or off-line.

NEPCO's proposal included dispersion modeling using an EPA-approved model, "ISC", in accordance with EPA modeling policy. Using the ISC model with the emission rates listed above, NEPCO evaluated each of the three coal-burning scenarios to predict the ambient TSP concentration in the area affected by emissions from the Salem Harbor plant, including appropriate background levels from nearby air quality monitoring stations. EPA has reviewed NEPCO's dispersion modeling and has concluded that under the specified operating scenarios, particulate emissions from coal-burning at Salem Harbor will not cause or contribute to violations of the primary NAAQS for TSP. Under downwash conditions, NEPCO's modeling predicted

a second highest TSP level of 259 micrograms per cubic meter. The 24-hour primary NAAQS for TSP is 260 micrograms per cubic meter, not to be exceeded more than once per year. As explained in Section C below, EPA believes that it is reasonable and practicable for NEPCO to achieve lower emissions and is, therefore, prescribing more stringent emissions limitations.

B. Compliance Schedule. In its April 15, 1981 DCO application, NEPCO proposed a compliance schedule of 45 months. EPA believes the schedule is generally reasonable, but has shortened the schedule by two months to reflect a shorter schedule for reporting the results of the stack tests demonstrating final compliance. Several of the increments of progress proposed in the NEPCO schedule also have been revised to facilitate tracking and identifying compliance activities at the plant.

NEPCO proposed that the order be promulgated as soon as possible but that the beginning date of its compliance with the schedule be the date that DOE had published a draft or final EIS. This is not acceptable. Section 113(d)( ) requires EPA to set forth an expeditious schedule. This statutory requirement is independent of DOE's statutory obligations under FUA. Therefore, NEPCO must commence compliance with the increments of progress set forth in this order without regard to DOE's progress with the EIS. As stated before, EPA is satisfied that DOE is progressing toward finalization of the prohibition order, including analysis of environmental impacts of the conversion.

C. Interim Requirements. The following interim requirements shall be applicable to NEPCO:

Requirements Applicable When Burning Old Coal

After reviewing all the information submitted by NEPCO, including source test results when old coal was last burned at the plant with the existing ESP's in place, EPA has determined that the existing ESP's are adequate to control emissions so as to comply with the primary NAAQS for TSP when old coal is burned at the plant. EPA does not believe it is necessary to set a more stringent particulate emission limit, because there is a limited amount of this old coal at the plant and a shift to cleaner coal can be reasonably required within two months after initial conversion to coal. The provisions of 113(d)(5)(B) regarding primary NAAQ's will be satisfied by EPA's requirement that NEPCO may burn old coal in only one unit at a time during this two-month period. Instead of setting an emission limit, EPA proposes to accept NEPCO's proposed load limitations applicable to old coal, restrict its use to the first two months of coal burning, and require that old coal be burned only when sections of a unit's ESP are fully powered and operating properly.

Requirements Applicable When Burning New Coal

Based on information NEPCO has provided on the quality of coal available to it and an evaluation of the collection efficiency of the existing ESP's as restored, EPA believes that compliance with the state ash regulation and emissions of no more than 0.60 pounds per million Btu heat input for all three units will be achieved when new coal is burned. For this reason, EPA will require compliance with the Massachusetts 9% ash limitation no later than two months from initial coal burning, will require a BPSER emission limit of 0.60 pounds per million Btu heat input for the first four-month period of new coal burning. At this emisssion rate, no load limitation is necessary for any unit to meet the primary NAAQS for TSP.

EPA believes that NEPCO can install additional particulate control measures during this four-month period to further reduce emissions below the 0.60 pounds per million Btu emission rate. NEPCO proposed to investigate flue gas conditioning (FGC) for possible application and also to go from full to half-wave ESP sectionalization to increase the reliability of the ESP's. Investigation of a single FGC system is not necessarily conclusive; there are other measures which can be used either in combination with FGC (e.g., new transformer-rectifier sets to supplement the ESP energization systems, or tuning coal burning to minimize emissions), or instead of FGC (e.g., pulse charging) which could substantially increase ESP efficiency and decrease particulate emissions.

EPA's consultant investigated application of some of these measures. A suitable FGC system has the potential for achieving particulate emission levels no higher than, and possibly well below 0.40 pounds per million Btu heat input. An FGC system in combination with new transformer-rectifier sets is projected to meet a particulate emission limit of approximately 0.30 pounds per million Btu heat input.

The table below compares the emissions and costs of five emission rates: (1) Those proposed by NEPCO, (2) 0.60, (3) 0.40, (4) 0.30, and (5) 0.12 pounds per million Btu heat input. EPA believes that for case (1) the emission rates as high as those proposed by NEPCO could occur only if the mechanical condition of the ESP's has degraded substantially below design condition, and further, if NEPCO were to fail to restore them to their proper operating states. For the remaining cases, EPA believes that the most practicable methods of particulate control necessary for meeting these emission rates are respectively (2) burning new coal with restore ESP's (3) burning new coal with installation of an effective FGC alone, (4) burning new coal with installation of an effective FGC and new transformer-rectifier sets, and (5) burning oil, (shown for comparison purposes). The table shows projections of actual particulate emissions (total tons over the 43-month interim period) annualized emission control costs added over the costs associated with NEPCO's proposal, and annual net fuel-cost savings. All three coal burining cases assume the compliance schedule which EPA proposes today. Under the Massachusetts "Oil Conservation Adjustment" legislation, one third of these fuel savings are returned to the consumers; the remaining savings are turned over to NEPCO to pay for the pollution control equipment and related costs associated with coal conversion, including taxes. Within certain prescribed limitation, this financial arrangement remains in force until the final conversion costs are paid.

Case	Total DCO particulate emissions (tons)	Added annual emission control costs ($1,000)	Annual net savings ($1,000)
(1) NEPCO's proposed emission rates	24,109	.....	46,650
(2) Primary standard conditions proposed by EPA: 0.60 pounds per million Btu	17,015	0	46,650
(3) As in (2) but 0.40 pounds per million Btu applies after 6 months (FGC)	11,084	676	45,974
(4) As in (2) but 0.30 pounds per million Btu applies after 6 months (FGC and new transformer-rectifier sets)	9,106	856	45,794
(5) Continued oil use at 1980 rate; 0.12 pounds per million Btu for comparison only	2,064	0	0

EPA is today proposing that a particulate emission limit of 0.35 pounds per milion Btu heat input with no load limitations apply to each coal-burning unit effective six months from initial coal burning (four months after burning new coal) for the duration of the DCO. This limit reflects EPA's judgment on what can be achieved with the installation of FGC systems and new transformer-rectifier sets on all three units, systems which EPA has determined to represent BPSER. Although the analysis prepared by

EPA's consultant showed that a lower emission rate may be achievable with this equipment, the 0.35 pounds per million Btu heat input limit is based on a conservative projection of FGC performance which EPA believes is reasonable.

EPA also recognizes that individual units at Salem Harbor may have varying degrees of difficulty meeting the single emission limit as proposed. While EPA wishes to allow NEPCO latitude in choosing the system which most effectively minimizes emissions, EPA must require the selection and use of BPSER in the DCO. To give NEPCO as much flexibility as possible in meeting the 0.35 pounds per million Btu heat input emission limit, EPA is not proposing to require installation of FGC and new transformer-receifier sets in the DCO. Rather, EPA is proposing to require NEPCO to submit a plan for meeting this emission limit and to obtain EPA approval of this plan before burning any coal at Salem Harbor. The plan must either commit to the installation of FGC and new transformer-rectifier sets on all units, or commit to some other particulate control method which, in EPA's judgment, would achieve equivalent emissions reductions. This plan will be available for public inspection at EPA Region I Headquarters at the address listed above.

EPA solicits comments on its proposed selection of BPSER and the resulting emission rate, as well as the proposed schedule for installation of the new ESP's which will assure final compliance with the state particulate emission and opacity regulations.

NEPCO also requested that EPA impose a total plantwide emission rate as an alternative to both the 0.60 and 0.35 pounds per million Btu emission rates that EPA proposes to apply to each unit as BPSER. Further, NEPCO has requested that this plantwide emission rate be specified in terms of weight of particulates per unit time.

EPA has a policy whereby sources may propose alternative emission reduction strategies, commonly referred to as "bubbles", for meeting emission limitations imposed by any applicable SIP provided certain criteria are met, including a test of comparable enforceability. Under NEPCO's proposal no emission rates would be set for the units individually, as currently exists.

Only the single plantwide emission rate would be set. Such an alternative emission reduction strategy is, in effect, a "floating bubble" because the emission rates of the individual units could fluctuate provided that the total plantwide emission rate is met. In order for such a "floating bubble" to be approvable, the source must propose a compliance procedure to the regulatory agencies whereby EPA and the state air pollution control agency could ascertain the total source emissions, at any given point in time, to assure compliance with the plantwide emission limitation. No such compliance procedure is presently included in the source's proposal. While NEPCO will be installing equipment capable of measuring opacity of emissions on a continuing basis, such equipment is incapable of measuring particulate mass emissions for the purpose of determining compliance. The company, therefore, bears the burden of convincing EPA that a compliance procedure is available that can be reasonably applied and enforceable. EPA will consider comments on this issue, as with all other issues raised in this proposal.

Miscellaneous Issues

A. Primary NAAQS for Sulfur Dioxide. Under Section 113(d)(5)(B) of the Act, 42 U.S.C. 7413(d)(5)(B), EPA is required to prescribe enforceable measures in a DCO which will protect all primary NAAQS. The DCO proposed today only addresses particulate emissions. The results of NEPCO's dispersion modeling of particulate emissions from Salem Harbor, however, can be used to predict SO_2 impacts. Such an evaluation predicts violations of the 24-hour primary NAAQS for SO_2 under certain downwash conditions while the plant is complying with the current sulfur-in-fuel requirement in the SIP, 1.2 lb. per million Btu per hour and, as interpreted by the State, figured on a 30-day average. Furthermore, a single 24-hour SO_2 concentration exceeding the primary NAAQS standard has been measured in the area; two exceedences in a year constitute a violation of the standard. Since the same sulfur limitation applies whether the plant burns oil or coal, this potential violation could exist whether or not Salem Harbor converts from oil to coal. Hence, it is possible that the existing state SIP may be inadequate to protect the NAAQS for SO_2 in the area around Salem Harbor with the present plant configuration.

However, the predicted SO_2 NAAQS violations result from downwash from the low stacks currently serving units 1, 2, and 3. Because NEPCO's coal conversion plans include a new, taller stack that conforms to good engineering practice, EPA believes that if an SO_2 problem involving the plant actually does exist, the proposed coal conversion will resolve it by eliminating the potential for downwash. EPA has suggested to DOE that the EIS for this conversion evaluate the ambient SO_2 impact under the new taller stack configuration to assure ambient standards will be attained.

Further, this coal conversion will not increase annual sulfur dioxide emissions. In fact, EPA expects lower actual annual SO_2 emission rates (as measured in pounds per million Btu's) from units 1, 2, and 3 after they convert to coal than while they are burning oil. Coal specifications require that coal shipments meet applicable sulfur-in-fuel regulations. Unlike oil, coal cannot be blended exactly to meet the maximum sulfur content allowed. Experience elsewhere shows that these factors result in the delivery of coal at a lower than maximum sulfur content to insure meeting the SIP.

B. Air Quality Monitoring. EPA is proposing to require particulate air quality monitoring and reporting as a further assurance of compliance with NAAQS. However, because ambient levels of TSP cannot be monitored on a continuous basis EPA also is requiring continuous emissions monitoring of SO_2 as a further indication of TSP levels. Measurements of SO_2 can be correlated with particulate and SO_2 emission rates to show continuous TSP impacts. The SO_2 data also will enable EPA to determine whether the current SIP is adequate to protect the NAAQS for SO_2.

C. Fugitive Particulate Emissions. A conversion from oil to coal burning will generally result in an increase in fugitive particulate emissions from coal storage and handling. NEPCO has not requested a DCO for fugitive particulate emissions. The DCO proposed today, however, requires NEPCO to detail a plan for minimizing such emissions. Fugitive emissions were not modeled in NEPCO's air quality analysis due to the difficulty of quantifying and modeling such emissions. To the extent that there are potentially significant fugitive particulate emission increases, EPA believes that reasonable control measures should be required to avoid any air quality problem.

Statutory Authority

This Order is issued under Sections 113(d)(5) and 114 of the Clean Air Act (the Act), as amended, 42 U.S.C. 7413(d)(5) and 7414. This Order contains a compliance schedule, interim requirements, monitoring and reporting requirements and other requirements which satisfy the terms of these Sections of the Act. Public notice has been provided under Section 113(d)(1) of the Act, 42 U.S.C. 7413(d)(1), and a copy of this Order has been provided to the

Governor of the Commonwealth of Massachusetts to seek his concurrence.

Findings

The Administrator of EPA (Administrator) makes the following findings:

1. New England Power Company (NEPCO) owns and operates the Salem Harbor Generating Station (Salem Harbor) located in Salem, Massachusetts.

2. Salem Harbor is a major stationary source, having the potential to emit more than 100 tons per year of particulate and sulfur dioxide while using pollution control equipment.

3. Currently, units 1, 2 and 3 at Salem Harbor burn residual oil.

4. On April 3, 1980, the U.S. Department of Energy (DOE) published a proposed order under the Powerplant and Industrial Fuel Use Act (FUA), 42 U.S.C. 8301 *et seq.*, which prohibited units 1, 2 and 3 from burning oil. On June 10, 1981, DOE published a Notice of Intent to Proceed on the Salem Harbor Prohibition Order (46 FR 30682).

5. An implementation plan to regulate air pollution in Massachusetts has been approved by the Administrator of EPA under Section 110 of the Act, 42 U.S.C. 7410.

6. 310 CMR 7.02(8) is part of the applicable state implementation plan (SIP) within the meaning of Section 113(d)(5) of the Act, 42 U.S.C. 7413(d)(5), and reads in pertinent part as follows:

> No person owning, leasing, or controlling the operation of any fossil fuel utilization facility shall cause, suffer, allow, or permit emissions therefrom in excess of those emission limitations set forth in the following table * * * (0.12 lbs. of particulate per million Btu heat input).

7. 310 CMR 7.05(4) is part of the applicable SIP within the meaning of Section 113(d)(5) of the Act, 42 U.S.C. 7413(d)(5) and reads in pertinent part as follows:

> *Ash Content of Fuels.* No person shall cause, suffer, allow or permit the burning in the district (Boston Metropolitan) of any fossil fuel containing an ash content in excess of nine per cent (9%) by dry weight.

8. 310 CMR 7.06(1) is part of the applicable SIP within the meaning of Section 113(d)(5) of the Act, 42 U.S.C. 7413(d)(5) and reads in part as follows:

(1) *From Stationary Sources Other than Incinerators*

> (a) No person shall cause, suffer, allow, or permit the emission of smoke which has a shade, density, or appearance equal to or greater than No. 1 of the Chart (20%) for a period, or aggregate period of time in excess of six minutes during any one hour, provided that at no time during the said six minutes shall the shade, density, or appearance be equal to or greater than No. 2 of the Chart (40%).

9. EPA has determined that units 1, 2 and 3 will be unable to meet the requirements of 310 CMR 7.02(8), 7.05(4) and 7.06(1) if the units convert to coal burning.

10. Salem Harbor is located in the Metropolitan Boston Air Quality Control District which is designated as an attainment area for primary total suspended particulates (TSP).

11. The Administrator has determined that the emission limits, requirements respecting pollution characteristics of coal and other enforceable measures contained in the following Order are sufficient to assure that the burning of coal at Salem Harbor will not result in emissions which cause or contribute to concentrations of any air pollutant in excess of any national primary ambient air quality standard (NAAQS) for such pollutant.

12. The Administrator also has determined that the compliance schedule in the following Order requires compliance with 310 CMR 7.02(8), 7.05(4) and 7.06(1) as expeditiously as practicable, but before December 31, 1985.

13. Furthermore, the Administrator has determined that the Interim Requirements of the following Order require the best practicable systems of emission reduction (BPSER) to protect the public health and minimize noncompliance with 310 CMR 7.02(8), 7.05(4) and 7.06(1).

Therefore, if this Order is issued by EPA, 40 CFR Part 55 would be amended by adding to Subpart W—Massachusetts, §55.471 *Delayed Compliance Order.*

Based on the foregoing findings, it is hereby ordered:

I. SIP Limitation

As specified in this Order, units 1, 2 and 3 of the Salem Harbor Generating Station owned by NEPCO shall comply with the interim limitations, compliance schedules, and other enforceable requirements set forth in this order. The emission limits contained in this order are authorized only until NEPCO can install the pollution control equipment necessary to achieve compliance with Sections 310 CMR 7.02(8), 7.05(4), and 7.06 of the Massachusetts SIP while burning coal at Salem Harbor. These regulations govern particulate emissions, coal ash content, and visible emissions, respectively.

As used in this Order, the term "old coal" means the high ash (over 17%) coal on site at Salem Harbor before April 15, 1981, when NEPCO petitioned EPA to allow coal burning at the plant. "New coal" as used in this Order, refers to coal which complies with the 9% ash limit of 310 CMR 7.05(4).

II. Interim Requirements

EPA has determined that the following interim requirements ensure that the burning of old or new coal in units 1, 2 and 3 will not cause or contribute to violations of the National Primary Ambient Air Quality Standard for total suspended particulates (TSP):

A. Preliminary Measures

1. (a) Prior to the burning of any coal at Salem Harbor, NEPCO shall submit to EPA a written plan detailing the specific measures it plans to use to meet the emission limit specified in II(C)(2) of this Order. As a minimum, this plan shall include the use of flue gas conditioning together with new transformer-rectifier sets or any other measures which NEPCO can demonstrate will achieve equivalent particulate emissions reduction. An implementation schedule also shall be required.

(b) NEPCO shall not commence burning of any coal at Salem Harbor until the above plan has been approved in writing by EPA.

2. Prior to the burning of any coal at Salem Harbor, NEPCO shall submit to EPA, a detailed program for minimizing fugitive particulate emissions from coal and coal ash handling. Upon approval by EPA, this program shall become a fully enforceable term of the Order.

B. Old Coal Burn

1. NEPCO shall be authorized to burn old coal for no more than 60 consecutive days following the effective date of this Order, but within the time limitation of Section III–A of this order.

(a) NEPCO shall burn old coal during this period only in either unit 2 or unit 3, but not in both units at the same time.

(b) During this time, unit 1 shall not burn any coal.

2. For the first 60 days of burning of old coal under this Order, net electric power generation from coal burning shall not exceed the following rates:

(a) Unit 2: 64MW
(b) Unit 3: 100 MW

Compliance with this limitation shall be based upon coal monitoring and reporting required by IV(B)(5) of this Order.

3. For the first 60 days of burning of old coal under this Order, no unit shall burn coal at any time unless all fields of its electrostatic precipitator are fully energized and operating properly. Compliance with this requirement shall be verified by electrostatic precipitator

records kept as required by IV(A)(6) of this Order.

C. New Coal Burn

1. (a) Upon initial burning of new coal in any unit, NEPCO shall not emit particulate matter from that unit at a rate in excess of 0.60 pounds per million Btu gross heat input.

(b) NEPCO shall conduct a particulate emission test on each unit within 45 days of initial burning of new coal in the unit to demonstrate compliance with the emission limit of (C)(1)(a) above.

2. (a) Within 120 days after initial burning of new coal in any unit under this Order, particulate emissions from each unit shall not exceed 0.35 pounds per million Btu gross heat input.

(b) NEPCO shall conduct a particulate emission test on each unit within 120 days of initial coal burning of new coal in any unit to demonstrate compliance with the emission limit of (C)(2)(a) above.

3. Within 30 days of completing each set of particulate emission tests required by II(C)(1) and (2) above, NEPCO shall submit to EPA a report which correlates visible emissions as determined by EPA Method 9 (40 CFR Part 60, Appendix A) as a function of particulate emissions from coal burning.

(a) Each report shall propose an enforceable visible emissions opacity limit for each unit covered by this Order.

(b) EPA shall set an opacity limit for enforcement under this Order within 30 days of receipt of each report.

(c) Each report also shall propose an opacity minitor reading which correlates with particulate emissions from coal burning.

(d) Within 30 days of receipt of each report, EPA shall set an opacity monitor reading which will be used as an indicator of continuous compliance with the emission limits of this Order.

(e) EPA may require NEPCO to submit additional visible emission analyses under IV(A)(5) of this Order, and may use the additional data to revise opacity limits applicable to coal burning under this Order.

III. Compliance Schedule

Before commencing the burning of old coal as allowable under this order, NEPCO shall continue to comply at all times with 310 CMR 7.02(8), 7.05(4), and 7.06(1). Once the burning of old coal has commenced, NEPCO shall proceed as expeditiously as practicable to achieve compliance with 310 CMR 7.02(8), 7.05(4), and 7.06(1). In no event shall NEPCO achieve increments of progress towards final compliance later than the earlier of the dates specified in the following compliance schedule:

Dates	Increment of progress
(A) Prior to the initial burning of old coal in any unit, or May 31, 1982.	Hire an architect/engineer for coal conversion project design and engineering.
(B) 2 months after initial burning of old coal in any unit, or July 31, 1982.	Attain compliance with 310 CMR 7.05(4). (Compliance shall be determined from reports and fuel analyses required under (IV)(B) of this order.)
(C) 9 months after initial burning of old coal in any unit, or February 28, 1983.	Enter contracts or place purchase orders for all major equipment including electrostatic precipitators, and ductwork, necessary for final compliance with 310 CMR 7.02(8) and 7.06(1).
(D) 21 months after initial burning of old coal in any unit, or February 28, 1984.	Initiate on-site construction or installation of electrostatic precipitators and ductwork.
(E) (1) 31 months after initial burning of old coal in any unit, or December 31, 1984.	Tie unit 1 into its completed electrostatic precipitator and ductwork.
(2) 35 months after initial burning of old coal in any unit, or April 30, 1985.	Tie unit 2 into its completed electrostatic precipitator and ductwork.
(3) 39 months after initial burning of old coal in any unit, or August 31, 1985.	Tie unit 3 into its completed electrostatic precipitator and ductwork.
(F) (1) 34 months after initial burning of old coal in any unit, or March 31, 1985.	Perform an emmission test demonstrating compliance of unit 1 with 310 CMR 7.02(8) and 7.06(1).
(2) 38 months after initial burning of old coal in any unit, or July 31, 1985.	Perform an emmission test demonstrating compliance of unit 2 with 310 CMR 7.02(8) and 7.06(1).
(3) 43 months after initial burning of old coal in any unit, or December 31, 1985.	Perform an emmission test demonstrating compliance of unit 3 with 310 CMR 7.02(8) and 7.06(1).

(G) 1. NEPCO shall submit written notice of its compliance status with each of the above listed compliance milestones within 10 calendar days after the date for achieving such milestones.

2. If noncompliance is reported, notification should include the following information:

a. A description of the noncompliance;

b. A description of any actions taken or proposed by NEPCO to comply with the elapsed schedule requirements;

c. A description of any factors which tend to explain or mitigate the noncompliance;

d. An approximate date by which NEPCO will perform the required action.

3. Futhermore, NEPCO shall submit calendar quarterly construction progress reports to EPA for the duration of this Order.

(H) In the event NEPCO is unable to comply with any of the schedule increments established in III(A)–(F) above, and such failure is due to an Act of God, war, strike, or other such causes beyond its control, NEPCO may petition EPA to extend the time for compliance with such schedule increment and all subsequent schedule increments by a period equal to the delay caused by such circumstances. NEPCO shall bear the burden of proving that a delay is caused by circumstances clearly beyond its control. Any delay caused by such circumstances shall not be deemed a violation of this Order. In no event, however, shall final compliance be achieved later than December 31, 1985.

IV. Monitoring and Reporting Requirements

A. Emissions Monitoring and Reporting Requirements

1. All particulate emission testing shall be conducted in accordance with Reference Method 5, 40 CFR Part 60, Appendix A, under operating conditions approved by EPA and in the presence of EPA personnel or EPA representatives.

(a) NEPCO shall provide safe access to safe sampling platforms on all units to be tested.

(b) For the purposes of this Order, a particulate emission test shall consist of four Method 5 sampling runs. One of the four runs shall be conducted during the normal boiler sootblowing cycle, and three runs shall be conducted without sootblowing.

(c) The average emission rate for a particulate emission test shall consist of the arithmetic average of the three non-sootblow runs prorated in a manner specified by EPA to account for the change in emissions encountered during the sootblow run.

2. For any emission or performance specification testing under this Order:

(a) NEPCO shall submit a pretest report to EPA at least 30 days before the proposed test date for any unit.

(b) No fewer than 5 days before NEPCO conducts any such test, EPA shall meet with appropriate NEPCO personnel and any representatives of the contractor responsible for the performance of the tests to discuss and finalize the testing protocol.

(c) NEPCO shall submit a written emission test report to EPA within 30 days of completing any EPA required emission testing.

(d) Pretest reports and emission test reports shall contain information as required by EPA and shall be presented in a format specified by EPA.

3. Within 120 days of the burning of new coal in any unit, NEPCO shall perform emission tests on each unit equipped with flue gas conditioning as follows:

(a) Two sets of tests shall be performed on each unit; one set while the flue gas conditioning system is operating, and one set while it is not operating.

(b) Each set of tests shall include:

(i) One particulate emission test of four runs conducted in accordance with EPA Method 5, 40 CFR Part 60, Appendix A.

(ii) At least 8 acid sulfate measurements shall be made in accordance with a method specified by EPA.

(iii) At least 8 sulfur dioxide measurements using EPA Method 6, 40 CFR Part 60, Appendix A.

(c) All acid sulfate and sulfur dioxide measurements shall be made during the approximate duration of the particulate testing.

(d) Each acid sulfate measurement shall be performed simultaneously with a sulfur dioxide measurement.

(e) The same type of coal shall be burned during both sets of tests.

(f) The boiler load, sootblowing operations and the amount of excess air shall be the same for both sets of tests.

(g) Both sets of tests shall be made while the unit and its electrostatic precipitator are operating under normal operating conditions.

(f) For any set of tests performed with flue gas conditioning, the flue gas conditioning system shall be operated in a manner recommended by the supplier of the conditioning agents.

(g) The tests with conditioning agents shall be preceded by at least 10 days of operation with conditioning agents to allow the precipitator to stabilize. Similarly, the tests without conditioning agents shall be preceded by at least 10 days of precipitator operation without conditioning agents.

(h) Each set of tests also shall be subject to the requirements of IV(A)(2) of this Order.

(i) If the approximate composition or usage rate of the conditioning agent changes at any time during the life of this Order, NEPCO shall notify EPA in writing within 15 days of the change. If such change occurs after NEPCO has performed the testing detailed above, EPA may require additional tests. If EPA decides to require additional tests, NEPCO shall be notified in writing. NEPCO shall perform the additional tests within 30 days of receipt of the written notice.

4. NEPCO shall install and operate continuous opacity monitoring equipment on each unit before burning coal in that unit.

(a) NEPCO shall demonstrate that each opacity monitor complies with performance specifications within 30 days after any coal is burned in the unit on which the monitor is installed. NEPCO shall comply with the provisions of 40 CFR Part 51, Appendix P, and the performance specification test requirements cross-referenced under 40 CFR Part 60, Appendix B. If two or more opacity monitors are used to report opacity from any single boiler, NEPCO shall submit to EPA, an approvable method for correlating each monitor to the total opacity at the stack outlet. NEPCO shall notify EPA 10 days before removing any monitor from its location. This notification also shall include data which demonstrates that the new location for the monitor or its replacement meets the requirements of 40 CFR Part 60, Appendix B. Additionally, the monitor or its replacement shall be completely recertified according to 40 CFR Part 60, Appendix B before it is reinstalled. Data demonstrating recertification shall be provided to EPA upon request.

(b) Not later than 30 days prior to initial start-up of the continuous opacity monitoring equipment, NEPCO shall submit to EPA, an approvable quality assurance program for the monitoring system.

(c) NEPCO shall report to EPA on a monthly basis all hourly average opacity readings for each opacity monitor which exceed the limits specified by EPA under II(c)(3) of this Order. These summary reports shall be submitted to EPA within 15 days of the end of each month; records of all hourly average opacity readings shall be retained at Salem Harbor for inspection for the duration of this Order.

5. NEPCO shall perform any additional testing required by EPA within 30 days of receipt of written notification of such requirement. Among other things, additional testing may be required to quantify changes in emissions due to such factors as changes in coal characteristics, changes in boiler or precipitator operations. Additional tests also may be required to quantify suspected changes in emissions indicated by frequent opacity exceedences. Any proposal made by NEPCO to limit total station emissions by derating one or more generating units may result in additional testing requirements for that unit or units at any proposed generation levels.

6. NEPCO shall maintain a logbook, available for EPA inspection, containing the following data for each electrostatic precipitator serving a unit burning old or new coal under this Order:

(a) NEPCO shall log secondary voltage, secondary current, and spark rate for each transformer-rectifier set every 4 hours while the unit is burning old or new coal.

(b) NEPCO shall log voltage current relationships across each transformer-rectifier set's operating range every 15 days for the first 60 days after initial burning of old coal. Thereafter the data shall be logged every 30 days for the duration of this Order.

B. Coal Monitoring and Reporting Requirements

Within 30 days of the effective date of this Order, NEPCO shall submit an approvable fuel monitoring plan to EPA. As a minimum, such plan shall include a commitment on the part of NEPCO to do the following:

1. NEPCO shall perform proximate analyses of all coal cargoes off-loaded at the Salem Harbor Generating Station.

(a) ASTM D 3176 shall be used for the performance of the proximate analysis.

(b) ASTM D 2234, Type I, conditions A, B, or C, and systematic spacing shall be used for sample increment collection.

(c) Table 2 of paragraph 7.1.5.2. of ASTM D 2234 shall be used to determine the number and weight of increments required per gross sample.

(d) One gross sample shall be collected for each shipment or for each 10,000 tons of coal, which ever is less.

2. NEPCO shall perform daily coal sampling and analyses for sulfur content, ash content and gross calorific value for coal burned in each unit under this Order.

(a) ASTM D 2234, Type I, conditions A, B, or C, and systematic spacing shall be used for sample increment collection.

(b) As a minimum, one increment shall be collected from each coal conveyor during each hour that an individual conveyor is in operation. Such increments from all conveyors are to be composited for analysis on a daily basis.

(c) Table 2 or paragraph 7.1.5.2. of ASTM D 2234 shall be used to determine the weight of each increment.

(d) ASTM D 2103 shall be used for sample preparation.

(e) ASTM D 3177 shall be used for sulfur analysis.

(f) ASTM D 3174 shall be used for ash analysis.

(g) ASTM D 2015 or ASTM D 3286 shall be used for gross calorific value determinations.

3. NEPCO shall participate in the EPA coal analysis methods audit program conducted by the Quality Assurance Division, Environmental Monitoring Systems Laboratory in Research Triangle Park, North Carolina. Coal audit samples shall be analyzed according to ASTM procedures for percent sulfur, moisture, ash content and gross calorific value and will be provided by EPA on a periodic basis.

4. Monthly reports containing coal cargo shipment sizes, coal analyses, cargo and daily coal analyses shall be submitted to EPA within 15 days of the close of each month in a format approved by EPA.

(a) Such reports also shall contain 30-day "rolling average" sulfur content values for the coal burned, calculated for each day of the month.

(b) The results of any audit coal sample analyses performed during that month also shall be included.

(c) All coal analysis data shall be presented on a dry basis.

5. NEPCO shall submit to EPA on a monthly basis, hourly average net megawatts generated for each unit. Monthly data shall be reported within 15 days of the end of each month in a format approved by EPA.

C. Ambient Monitoring and Reporting Requirements

1. Within 60 days of the effective date of this order, NEPCO shall install and operate a network of ambient monitors to measure TSP concentration on a daily basis and sulfor dioxide (SO_2) concentration on a continuous basis.

(a) As a minimum, NEPCO shall place both TSP and SO_2 monitors near each of the following locations:

i. Water Tower, Green Street, Marblehead.
ii. Winter Island Dam, Salem.

iii. NEPCO right-of-way, north of Fort Avenue, Salem.

iv. NEPCO property southeast of Derby and English Streets.

v. Beverly north of Mackerel Cove.

(b) The burning of coal at the Salem Harbor Generating Station under this order constitutes acceptance by MEPCO that ambient monitoring data collected on its property is representative of ambient air quality levels in the surrounding area. EPA may use this data as such for any purpose appropriate under the Act.

2. The sampling frequency at a TSP monitoring site may be reduced to once every three days if the following conditions are met at such site during any continuous 365 day period after new coal has been burned in all three units:

(a) Every 24-hour TSP concentration measured at the site must be less than 200 micrograms per cubic meter and;

(b) The annual geometric mean of TSP measured at the site must be less than 60 micrograms per cubic meter.

3. All ambient monitoring locations and equipment installations must be approved by EPA prior to operation and must meet 40 CFR Part 58, Appendix B (Quality Assurance), Appendix C (Ambient Air Quality Monitoring Methodology), and Appendix E (Probe Siting Criteria).

(a) All SO_2 analyzers are to be operated on the 0.5 ppm range unless ambient air quality levels exceed this concentration. If this occurs, then any such instrument must be operated on the higher range.

(b) Within 30 days of the effective date of this Order, NEPCO shall submit in writing to EPA, an approvable quality control program.

(c) EPA will accept performance audits by DEQE to satisfy the requirements for the quarterly accuracy audit (40 CFR Part 58, Appendix B, Section 3), but it will be NEPCO's responsibility to provide independent performance audits for any calendar quarter not audited by DEQE.

4. Within 60 days of the effective date of this Order, NEPCO shall construct a meteorological tower at a location near the company right of way north of Fort Avenue.

(a) NEPCO shall operate continuous monitoring instruments on this tower to measure wind speed and direction.

(b) The exact location and height of the tower shall be selected by NEPCO and approved by EPA in writing before the tower is constructed.

(c) All meteorological instrumentation shall comply with EPA requirements as specified in EPA Guideline 450/4–80–012 for approval at least 30 days before they are implemented.

5. All data shall be submitted to DEQE within 15 days of the close of each month in machine readable SAROAD fomat.

(a) The data reported to DEQE shall be for individual hourly observations of SO_2, wind speed, and direction, as well as daily averages for TSP.

(b) NEPCO shall insure that EPA receives the above information within 90 days of the end of each calendar quarter.

(c) NEPCO shall notify EPA of any exceedence of any Primary National Ambient Air Quality Standard within 48 hours of its occurance.

6. Within 30 days of the occurance of any violation of the National Ambient Air Quality Standard for total suspended particulates, NEPCO shall submit to EPA, all relevant data under Section 113(d)(5)(D)(i) through (iii) of the Act.

V. General Requirements

A. This Order shall not be effective during any interval after EPA finds and notifies NEPCO that (1) a National Primary Ambient Air Quality Standard for total suspended particulates is being exceeded in the Metropolitan Boston AQCR and (2) NEPCO has failed to prove that the requirements of Sections 113(d)(5)(D)(i) through (iii) of the Act have been satisfied. During any such intervals, NEPCO shall comply with 310 CMR. 7.02(8), 7,05(4) and 7.06. If NEPCO violates these regulations, it shall be subject to enforcement action under any and all authorities of Section 113 of the Act.

B. Nothing herein shall affect the responsibility of NEPCO to comply with any applicable local, state or federal Regulations.

C. NEPCO shall submit a copy of all correspondence and reports required under this Order to the Director, Enforcement Division, EPA, Region I, JFK Federal Building, Boston, MA 02203.

NEPCO may assert a business confidentiality claim covering part or all of the information requested by this Order, in the manner described by 40 CFR 2.203(b). Information covered by such a claim will be disclosed by EPA only as set forth in 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to NEPCO. Certain categories of information are not properly the subject of such a claim. For example, the Act provides that emission data shall in all cases by made available to the public. See 42 U.S.C. § 7414(c).

D. NEPCO is hereby notified that its failure to achieve final compliance at its Salem Harbor Station with 310 CMR 7.02(8), 7.05(4) and 7.06 by the compliance date specified in III(F)(3) of this Order may result in an assessment of a noncompliance penalty under Section 120 of the Act, 42 U.S.C. 7240. This penalty may be imposed at an earlier date, as provided under Section 113(d) and Section 120 of the Act, in the event that this Order is terminated or violated as provided in (E) and (F) below. In either event, NEPCO will be formally notified of its noncompliance, under Section 120(b)(3) of the Act or any regulations promulgated thereunder.

E. This Order shall be terminated in accordance with Section 113(d)(8) of the Act if the Administrator determines, on the record, after notice and opportunity for hearing, that the inability of NEPCO to comply with 310 CMR 7.02(8), 7.05(4), and 7.06 as approved by EPA, no longer exists with respect to its Salem Harbor Station. Additionally, if NEPCO demonstrates compliance with 310 CMR 7.02(8), 7.05(4), and 7.06 prior to the applicable compliance dates specified in III(B) and (F) of this Order, then this Order shall be terminated at that earlier date.

F. Violation of any requirement of this Order shall result in one or more of the following actions:

1. Enforcement of such requirement under Section 113(a), (b), or (c) of the Act, 42 U.S.C. 7413(a), (b), or (c);

2. Revocation of this Order, after notice and opportunity for a public hearing;

3. Notification of noncompliance and assessment of a noncompliance penalty under Section 120 of the Act.

G. This order is effective upon publication in the **Federal Register** and after having received concurrence from the Governor of the Commonwealth of Massachusetts.

The Administrator's decision to approve or disapprove this delayed compliance order will be based on whether it meets the requirements of Section 113(d)(5) and 113 d(6)–(12) of the Clean Air Act, as amended. This delayed compliance order is being proposed pursuant to Section 113(d) of the Clean Air Act, as amended (42 U.S.C. 7410).

Dated: July 10, 1981.

Leslie Carothers,

Acting Regional Administrator, Region I.

[FR Doc. 81–22353 Filed 7–30–81; 8:45 am]

BILLING CODE 6560–38–M

DEPARTMENT OF COMMERCE

Maritime Administration

46 CFR Part 381

Cargo Preference; Geographical Allocation of Cargoes; Suspension of Rulemaking

AGENCY: Maritime Administration, Commerce

ACTION: Withdrawal of proposed rule.

SUMMARY: On January 9, 1981, the Maritime Administration proposed a new 46 CFR 381.8 which would interpret a provision in the Cargo Preference Act of 1954 as requiring the equitable allocation of preference cargoes among the ports in each of the four coastal areas of the United States. It would direct each agency or department with responsibility for administering programs subject to the Act to prescribe regulations or formal staff instructions and to develop an implementing Action Plan by which it shall "endeavor" to make a proportional distribution among the ports in the four coastal areas of various types of cargoes generated by its programs. It provides that in no case shall any coastal area receive less than 10 percent of an agency's or department's cargo. The Maritime Administration (Agency) has carefully reviewed 198 comments submitted in response to the notice of proposed rulemaking, and has concluded that the proposed rule should not be implemented.

FOR FURTHER INFORMATION CONTACT: Robert J. Patton, Jr., Secretary, Maritime Administration, Room 3099–B, Washington, D.C. 20230, (202) 377–2188.

SUPPLEMENTARY INFORMATION: On January 9, 1981, the Agency published in the **Federal Register**, as proposed rulemaking, new 46 CFR 381.8. The Cargo Preference Act of 1954 (Act) (46 U.S.C. 1241(b)), is incorporated in the Merchant Marine Act, 1936, as section 901(b). The Act requires Government agencies to take such steps as may be necessary and practicable to assure that U.S.-flag vessels shall transport at least 50 percent of the gross tonnage of ocean cargoes that the agencies or their programs generate, if such vessels are available at fair and reasonable rates, in such a manner as will insure a fair and reasonable participation of U.S.-flag commercial vessels in such cargoes "by geographical areas." The proposed rule interprets the phrase, "by geographical areas," to require that each agency or department responsible for generating preference cargo make equitable allocations of its preference cargoes among the ports in the four coastal areas of the United States: Great Lakes, Atlantic Coast, Gulf Coast, and Pacific Coast. As proposed, the rule would direct each agency or department to prescribe regulations or formal staff instructions, develop an Action Plan and endeavor to make a proportional distribution of the various types of preference cargoes—liner, dry bulk and liquid bulk—to accomplish this equitable allocation of its preference cargoes. In no case would any coastal area receive less than 10 percent of the agency's or department's cargo.

Summary of Comments and Disposition of Proposed Rule. There were a total of 198 comments received of which 154 were received before March 9, 1981, the closing date of the comment period, and 44 received after the closing date. All of the 198 comments were reviewed. None of the 44 comments received after the close of the comment period raised any new material or issues which had not been raised by comments received prior to the close of the comment period.

Of the 198 comments, there were 179 comments taking a position concerning the Proposed Rule of which 112 favored promulgation of a final rule and 67 were opposed. The supporting comments generally contend that the Proposed Rule will:

1. Give the Great Lakes its equitable share of preference cargo.
2. Develop Great Lakes ports and associated facilities.
3. Attract U.S. flag vessels to the Great Lakes area.
4. Result in some economic revitalization of the Great Lakes area.

The opposing comments generally contend that the Proposed Rule involves, among other things:

1. Questionable statutory authority.
2. Increased cost to Government programs by reasons of:

(a) Major changes in normal transportation and distribution channels

(b) Burdensome administrative changes in procurement practices

(c) Delays and other frustrations caused by increased distances, vessel size restrictions, and weather conditions associated with the Great Lakes.

The comments developed two primary issues: first, whether there is sufficient legal authority to form the basis for promulgation of the Proposed Rule and second, if there is such authority, whether an effort to achieve a minimum preference cargo distribution to all coastal areas by implementation of the Proposed Rule would require that the cognizant Federal agencies take steps which would go substantially beyond those considered necessary and practicable under the Act.

Based upon the comments and its own review, the Agency finds and determines:

1. That there is sufficient legal authority to form the basis for promulgation of a final rule for the Geographical Allocation of Preference Cargo as proposed in new 46 CFR 381.8.
2. That a final rule will not be promulgated at this time in that it would require that the cognizant Federal agencies take steps which would go substantially beyond those considered necessary and practicable under the Act.
3. That notwithstanding the Agency's determination that promulgation of a final rule would not be appropriate, the Agency has determined that, based on the comments received, there is sufficient basis for the Agency to actively initiate discussions with the cognizant Federal agencies in an effort to encourage an equitable distribution of preference cargo within existing rules and guidelines.

A detailed Fact Finding Study and analysis forming the basis for the Agency's determination is available in the Office of the Secretary, Maritime Administration, Room 3099–B, Main Commerce Bldg., Washington, D.C. 20230 or upon request to the Secretary.

Dated: July 28, 1981.

Murray A. Bloom,

Acting Secretary.

[FR Doc. 81–22420 Filed 7–30–81; 8:45 am]

BILLING CODE 3510–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[FCC 81–343]

Regulatory Flexibility Act Plan for Periodic Review of the Commission's Rules and Regulations

AGENCY: Federal Communications Commission.

ACTION: Plan for periodic review of Commission regulations.

SUMMARY: This action establishes a plan for the periodic review of FCC regulations pursuant to the requirements of the Regulatory Flexibility Act of 1980 (94 Stat. 1164, Public Law 96–354, September 19, 1980) 5 U.S.C. § 610. The plan specifies the parts of the Commission's rules that will be reviewed over the next five years. Any revision on this plan will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Renee Licht, Office of General Counsel (202) 632-6990.

SUPPLEMENTARY INFORMATION: Pursuant to the published plan, a list of specific regulations to be closely examined in the first year of the Commission's overall review will be published by September 1, 981, and provision will be made for comments by interested parties.

Adopted: July 27, 1981.

Released: July 29, 1981.

By the Commission:

1. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 610, the Commission hereby adopts this plan for the periodic review of all rules issued by the agency which have, or will have, a significant economic impact on a substantial number of small entities. The purpose of the review will be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of such rules upon a substantial number of small entities. The Commission will review all such rules in effect on January 1, 1981 within ten years of that date and all rules adopted thereafter within ten years of their adoption as final rules.

2. The accompanying table outlines a broad schedule for reviewing FCC regulations during the next five years. A schedule for reviewing the remainder of the Commission's regulations will be published at a later date.

3. In reviewing each rule under this plan to minimize significant economic impact on small entities consistent with the stated objectives of applicable statutes, the FCC will consider the following factors:

(1) The continued need for the rule;

(2) The nature of complaints or comments received concerning the rule from the public;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

4. By September 1, 1981 and by September 1 of each succeeding year, an annual plan which lists specific rules and regulations selected for review during the following 12 months will be submitted by the Commission to the **Federal Register** for publication. Appropriate information will be provided for each such rule including a brief description of the rule and the need for and legal basis of the rule. Consistent with the aims of the Regulatory Flexibility Act, the public will be invited to comment on the rules chosen for review each year during a 60-day period from the date the annual plan is published in the **Federal Register.**

5. In selecting the rules to be reviewed during a particular 12-month period, the FCC will attempt to review its most significant and burdensome rules first. The Commission is also undertaking a broader review of its regulations with an eye toward eliminating or modifying those that are no longer in the public interest. This may require acceleration or other modification of the accompanying schedule for review. Notice of any such modification will be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

Schedule for Review

47 CFR	Regulations
1981-1982	
Part 2, Subpart J	Frequency Allocations and Radio Treaty Matters; General Rules and Regulations.
Part 15, Subpart G	Radio Frequncy Devices.
Part 17	Construction, Marking, and Lighting of Antenna Structures.
Part 21, Subparts B, E, I, K	Domestic Public Fixed Radio Service.
Part 22 (except Subparts E, F, I, J, K).	Public Mobile Radio Service.
Part 25	Satellite Communications.
Part 31	Uniform System of Accounts for Class A and Class B Telephone Companies.
Part 33	Uniform System of Accounts for Class C Telephone Companies.
Part 34	Uniform System of Accounts for Radio Telegraph Carriers.
Part 35	Uniform System of Accounts for Wire-Telegraph and Ocean-Cable Carriers.
Part 43	Reports of Communications Common Carriers and Certain Affiliates.
Part 61	Tariffs.
Part 63	Extension of Lines and Discontinuance of Service by Carriers.
Part 64	Miscellaneous Rules Relating to Common Carriers.
Part 68	Connection of Terminal Equipment to Telephone Network.
Part 74, Subparts D, E, F, H	Experimental, Auxiliary, and Special Broadcast and Other Program Distribution Services.
Part 76, Subparts C, D, J, K	Cable Television Service.
Part 83, Subparts A, B, D, K, L	Stations on Shipboard in the Maritime Services.
Part 90, Subparts A through F	Private Land Mobile Radio Services.
Part 95, Subpart A	Personal Radio Services.
Part 97	Amateur Radio Service.
1982-1983	
Part 15, Subparts D, E	Radio Frequency Devices.
Part 21, Subparts A, D	Domestic Public Fixed Radio Service.
Part 22, Subparts A, B	Public Mobile Radio Service.
Part 25	Satellite Communications.
Part 31	Uniform System of Accounts for Class A and Class B Telephone Compainies.
Part 33	Uniform System of Accounts for Class C Telephone Companies.
Part 34	Uniform System of Accounts for Radio Telegraph Carriers.
Part 35	Uniform System of Accounts for Wire-Telegrahph and Ocean-Cable Carriers.
Part 63	Extension of Lines and Discontinuance of Service by Carriers.
Part 64	Miscellaneous Rules Relating to Common Carrier.
Part 66	Applications Relating to Consolidation, Acquisition or Control of Telephone Companies.
Part 74, Subparts A, B, C, G, I, L	Experimental, Auxiliary, and Special Broadcast and Other Program Distribution Services.
Part 76, Subparts G, I, F	Cable Television Service.
Part 78	Cable Television Relay Service.
Part 83, Subparts E-J, M	Stations on Shipboard in the Maritime Services.
Part 90, Subparts G-J	Private Land Mobile Radio Services.
Part 95, Subpart D	Personal Radio Services.
1983-1984	
Part 1, Subpart E	Practice and Procedure.
Part 2, Subparts I, K	Frequency Allocation and Radio Treaty Matters; General Rules and Regulations.
Part 15, Subparts C, F, H	Radio Frequency Devices.
Part 21, Subparts E, J	Domestic Public Fixed Radio.
Part 22, Subparts C, E	Public Mobile Radio Service.
Part 23	Fixed Public Services.
Part 31	Uniform System of Accounts For Class A and Class B Telephone Companies.
Part 33	Uniform System of Accounts for Class C Telephone Companies.
Part 34	Uniform System of Accounts for Radio Telegraph Carriers.
Part 35	Uniform System of Accounts for Wire-Telegraph and Ocean-Cable Carriers.
Part 43	Reports of Communications Common Carriers and Certain Affiliates.
Part 64	Miscellaneous Rules Relating to Common Carriers.
Part 66	Applications Relating to Consolidation, Acquisition, or Control of Telephone Companies.
Part 68	Connection of Terminal Equipment to the Telephone Network.
Part 73, Subparts A, B, F, G	Radio Broadcast Services.
Part 76, Subparts H, K	Cable Television Service.
Part 83, Subparts N, R, AA	Stations on Shipboard in the Maritime Services.
Part 90, Subparts K-M	Private Land Mobile Radio Services.
Part 95, Subpart C	Personal Radio Services.
1984-1985	
Part 18, Subparts C, D, E, F, H, I.	Industrial, Scientific and Medical Equipment.
Part 21, Subpart F	Domestic Public Fixed Radio Service.
Part 22, Subparts E, F, G	Public Mobile Radio Service.
Part 25	Satellite Communications.

Schedule for Review—Continued

47 CFR	Regulations
Part 31	Uniform System of Accounts for Class A and Class B Telephone Companies.
Part 33	Uniform System of Accounts for Class C Telephone Companies.
Part 34	Uniform System of Accounts for Radio Telegraph Carriers.
Part 35	Uniform System of Accounts for Wire-Telegraph and Ocean-Cable Carriers.
Part 43	Reports of Communications Common Carriers and Certain Affiliates.
Part 63	Extension of Lines and Discontinuance of Service by Carriers.
Part 64	Miscellaneous Rules Relating to Common Carriers.
Part 68	Connection of Terminal Equipment to the Telephone Network.
Part 73, Subpart E	Radio Broadcast Services.
Part 83, Subparts O, S, T, U, X, Z, BB, CC, DD	Stations on Shipboard in the Maritime Services.
Part 90, Subparts N, O	Private Land Mobile Radio Services.
Part 95, Subpart E	Personal Radio Services.
1985–1986	
Part 2, Subpart L	Frequency Allocations and Radio Treaty Matters; General Rules and Regulations.
Part 5, Subparts C, D, E, F	Experimental Radio Services (Other Than Broadcast).
Part 21	Domestic Public Fixed Radio Service.
Part 22, Subparts H, I, J, K, L	Public Mobile Radio Service.
Part 31	Uniform System of Accounts for Class A and B Telephone Companies.
Part 33	Uniform system of Accounts for Class C Telephone Companies.
Part 63	Extensions of Lines and Discontinuance of Service by Carriers.
Part 64	Miscellaneous Rules Relating to Common Carriers.
Part 66	Applications Relating to Consolidation, Acquisition or Control of Telephone Companies.
Part 68	Connection of Terminal Equipment to the Telephone Network.
Part 73	Radio Broadcast Services.
Part 83, Subparts P, Q, V, W	Stations on Shipboard in the Maritime Services.
Part 90, Subparts Q and R	Private Land Mobile Radio Services.

[FR Doc. 81-22458 Filed 7-30-81; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Parts 2, 23, and 94

[Gen. Docket No. 80-603; File No. DBS 81-01; FCC 81-340]

Development of Regulatory Policy in Regard to Direct Broadcast Satellites; Satellite Television Corporation; Application for a Satellite-to-Home Subscription Television Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule and policy statement; establishment of opposition time periods and file number and delegation of authority.

SUMMARY: This Order establishes time periods for oppositions to petitions to deny direct broadcast satellite (DBS) applications and for replies to oppositions. It establishes a file number for Satellite Television Corporation's DBS application. It also grants delegated authority to the Chief of the Office of Plans and Policy, as head of a Working Group on DBS, to handle routine matters in the processing of DBS applications. These steps are taken to facilitate processing of DBS applications.

DATES: Oppositions may be filed within 15 days after the original pleading is filed. The person who filed the original pleading may reply to oppositions within 10 days after the time for filing oppositions has expired.

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

FOR FURTHER INFORMATION CONTACT:
Florence Setzer or Bruce Franca, Office of Plans and Policy, (202) 653-5940.

SUPPLEMENTARY INFORMATION:

Adopted: July 20, 1981.

Released: July 21, 1981.

By the Commission: Commissioner Dawson not participating.

I. Administrative Matters

In the Matter of inquiry into the development of regulatory policy in regard to direct broadcast satellites for the period following the 1983 Regional Administrative Radio Conference and Satellite Television Corporation application for a satellite-to-home subscription television service.

1. Our *Notice of Proposed Policy Statement and Rulemaking* on interim DBS policies did not specify a time period in which to file oppositions to petitions to deny interim DBS applications. Oppositions to any motion, petition, or request may be filed within 15 days after the original pleading is filed. The person who filed the original pleading may reply to oppositions within 10 days after the time for filing oppositions has expired. The reply shall be limited to matters raised in the oppositions, and the response to all such matters shall be set forth in a single pleading; separate replies to individual oppositions shall not be filed.

2. The Commission has designated the File Number DBS-81-01 to be applied to the application filed by Satellite Television Corporation. This number, as well as the docket number, should be included on all correspondence concerning STC's application.

II. Delegation of Authority

3. In order to expedite the review and processing of applications for interim DBS systems received in the near future, the Commission has established an inter-bureau Working Group to be headed by the Chief of the Office of Plans and Policy. While each application for an interim DBS system shall be acted upon by the Commission to determine if authorization of the system is in the public interest, the Working Group shall be responsible for the preliminary review and processing of applications received by July 16, 1981. The Working Group shall review all applications to ensure compliance with the requirements specified in the *Notice* and any other requirements that may be adopted by the Commission, and shall make recommendations concerning Commission action on the application. The Working Group shall also be responsible for review of comments or petitions filed in response to any applications. Accordingly, authority is delegated to the Chief, Office of Plans and Policy, to take such action as is necessary to perform these functions effectively and efficiently.

4. The Secretary shall cause this order to be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-22355 Filed 7-30-81; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Parts 2 and 90

[Gen. Docket No. 80-135; RM-3378; FCC 81-291]

Inland Expansion of Non-Government Radiolocation in the 420-450 MHz Frequency Band Including the Use of Spread Spectrum Technology

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission is proposing to revise its Rules, in response to a petition for rulemaking, to allow expanded use of non-Government radiolocation in the 420–450 MHz band. Radiolocation involves the use of radio waves to determine position for purposes other than those of navigation, e.g., oil exploration. Present use is restricted to shoreline areas. Proposed changes would allow inland expansion on a non-interference basis, and would allow the demonstrated benefits of accurate radiopositioning to be applied to

agricultural, forestry and inland aerial surveying. The rulemaking should have a positive effect for non-Government radiolocation users by providing higher accuracy in medium to long-range radiolocation operations and by providing for the usage of various system technologies including spread spectrum.

DATES: Comments are due on or before September 21, 1981 and replies on or before October 21, 1981.

ADDRESS: Federal Communications Commission, 2025 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Tropea or Mr. George Sarver, Office of Science and Technology, 2025 M Street, N.W., Washington, D.C. 20554, (202) 653-8167.

SUPPLEMENTARY INFORMATION:

Further Notice of Proposed Rule Making

Adopted: June 30, 1981.

Released: July 22, 1981.

By the Commission: Commissioners Fogarty and Jones absent.

I. Introduction

1. This rule making proceeding (General Docket No. 80-135) was initiated in response to a petition (RM-3378) filed May 10, 1979, by Del Norte Technology, Inc. (hereinafter "Del Norte") which requested amendment of footnote US 217 of Section 2.106, and § 90.103(c)(21) of the Rules to delete the January 1, 1981, cut-off date for assignment of frequencies in the 420-450 MHz band for non-Government radiolocation along the shorelines of Alaska and the contiguous 48 states. The petitioner further requested that the rules be amended to permit expanded use of non-Government radiolocation inland using spread spectrum techniques and that technical standards be developed to govern the continued operation of non-Government radiolocation equipment in the 420-450 MHz band.

2. Following a Notice of Proposed Rule Making (Notice) which was adopted March 31, 1980 (April 15, 1980; 45 FR 25412), a Report and Order (FCC 80-631) was adopted on November 6, 1980 (December 18, 1980; 45 FR 83231). This Report and Order deleted the January 1, 1981, cut-off date thereby permitting continued non-Government use of the 420-450 MHz band for radiolocation operations on a non-interference basis along the shorelines of Alaska and the contiguous 48 states. Continued use of this band was considered desirable because of its capability for higher accuracy in medium to long-range radiolocation.

3. At the time of filing, timely comments were submitted by Crown Zellerback; Geophysical Services, Inc.; Hard-Castle Ag-Air, Inc.; The Helicopter Association of America; The National Agricultural Aviation Association; Offshore Navigation, Inc.; Sercel, Inc.; The U.S. Department of Agriculture and the Weyerhaeuser Company. All comments were supportive of the petition.

II. Background

4. On August 21, 1974, the Commission adopted a Notice of Proposed Rule Making in Docket 20147 [1] to amend Parts 2 and 91 (now Part 90) of the Commission's Rules to permit the assignment of frequencies in the 420-450 MHz band for non-Government radiolocation. The amendment was necessary to accommodate old SHORAN-type [2] radiolocation systems that were required to vacate frequencies in the 220-310 MHz band. The NPRM considered the 420-450 MHz and the 2900-3700 MHz bands as possibilities for reallocation. Use of the 2900-3700 MHz band was considered least desirable by users since operational systems were not available at the time. On the other hand, equipment in the 420-450 MHz band was available for immediate use and, in fact, equipment designed for operation in the 220-310 MHz band could be converted for use in this band with a relatively simple modification. On March 10, 1976, the Commission adopted a Report and Order in Docket 20147 [3] permitting the use of the 420-450 MHz band for non-Government pulse-ranging type radiolocation along the shorelines of Alaska and the contiguous 48 states until January 1, 1981, on a non-interference basis to Government radiolocation and Amateur Radio operations. Operation was limited to the shoreline areas since the usage was primarily for off-shore oil exploration and to minimize the possibility of interference to the higher priority users [4] of the band.

5. As noted above, the prior rulemaking in the subject docket deleted the January 1, 1981, cut-off date. This action allowed for continued shoreline operation of non-Government radiolocation stations in the 420-450 MHz band. This Further Notice addresses the remaining issues of RM-3378 regarding the expansion of inland usage in thiis band by non-Government radiolocation systems.

III. Description of Radiolocation Systems

6. Radiolocation involves the use of radio waves to determine position for purposes other than those of navigation, e.g., oil exploration. Precise distance and position determinations are achieved by radiolocation systems using multiple transmitters and receivers and by measuring the time required for radio transmissions to travel between an unknown location and a fixed reference location. By the use of radar techniques, the radiolocation transmitter emits energy in the form of periodic pulses with very high power for short intervals. A portion of the transmitted energy is reflected back to the transmitter location by objects or formations and the time delay of the returning signal or echo is a measure of the distance to the reflecting object. The direction of the reflecting object can be obtained by the use of directional transmitting and receiving antennas.

7. The type of emission designator used to describe currently licensed Industrial Radiolocation Service systems in the 420-450 MHz band is P0. P0 emission indicates that the transmitted signal consists of an unmodulated pulse. One of the most widely used radiolocation systems in use today is known by the code name SHORAN. SHORAN can operate in the 420-450 MHz band and provides accurate radio positioning by determining the distance from transmitters located at two or more known positions. The SHORAN-type systems are also known as pulse-ranging systems since distance or range is determined by means of a pulsed transmission. The occupied bandwidth presently authorized for P0 emission in non-Government radiolocation stations operating in the 420-450 MHz band ranges from about 2 to 6 MHz.

8. The petitioner, Del Norte Technology, Inc. has developed another radiolocation system which it classifies under the code name Trisponder. The Del Norte Trisponder system employes spread spectrum techniques and utilizes pulse expansion and compression to achieve a significant improvement in gain with moderate power. The Trisponder system uses two or more stationary transponder (remote) units which are configured to repeat interrogation pulses from an identical transponder (master), all of which mesure the various distances directly.

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[1] See *Notice of Proposed Rule Making*, FCC 74-882 (August 29, 1974; 39 FR 31533).

[2] SHORAN stands for Short Range Navigation and is a pulse-ranging type of radiolocation system.

[3] See *Report and Order*, FCC 76-228.

[4] The primary allocation of the band is for Government Radiolocation operation. Amateur service and Amateur-Satellite service operations have secondary allocation status in the band.

Del Norte alleges that its proposed system enhances overall system performance and that it provides a high degree of compatibility between radiolocation and other users of the spectrum, particularly normal single sideband and FM voice communications.

9. Del Norte also states that tests indicate that the degree of isolation between its radiolcation system and other voice communications systems should be between 50 and 70 dB and that radiolocation and communications systems may co-exist without causing unacceptable interference to each other. Del Norte has applied for and has been granted FCC type acceptance for its transponder equipment which it proposes to operate in the 420–450 MHz band. The authorized output power is 50 watts, and utilizes F9 type emission with a bandwidth of 14.7 MHz.

10. In addition to the SHORAN and Trisponder Systems, there are many other systems employed for radiolocation operations such as HIRAN, LORAN-C, Raydist, ONIX, HIREX, Doppler Sonar MAXIRAN, Autotape and Satellite Navigation. While this is not intended to be an all inclusive list of systems available, it does serve to point out that many different systems are in use and that obviously each offers particular technological advantages as well as having specific limitations. Accordingly, the determination of which operating system is considered most suitable for a particular task is dependent on such technical and operational conditions as range of coverage, accuracy required, typography, climate and time of day.

IV. Reported Need for Inland Operation

11. Radiolocation devices have been useful in the measurement, description and mapping of the surface waters of the earth for navigational purposes. They have also been used extensively to accomplish offshore oil exploration and for the precise determination of possible drilling locations. While non-Government radiolocation has proven very useful along the shorelines of the United States, the need to apply the benefits derived from use of the 420–450 MHz band systems to inland operations is alleged by the petitioner. For example, the need for accurate positioning is considered essential to the application of agricultural chemicals for food production and forestry needs. Radiolocation is said to be an essential tool to insure that chemical substances are applied in a manner that is environmentally safe and productively efficient. Thus, the use of radiolocation for accurate positioning can reportedly provide a valuable service to agricultural and forestry applications such as crop dusting, forestry spraying and fertilization. Other non-agricultural and non-forestry type applications include photogrammetry, claim staking and aerial surveying.

12. While radiolocation operations at 2 GHz and above are available for inland use, the petitioner and other comments supportive of the petition state that the use of the 420 450 MHz band has distinct operating advantages. In this regard, the Weyerhauser Technical Center commented that aircraft operations over forest land are growing daily and that authorization of the 420–450 MHz band will eliminate the line of sight constraints on their operation and enhance air safety. The U.S. Department of Agriculture Forest Service agreed that use of a precision locating system in this band would be a definite asset in many aviation missions for the Forest Service since current line of sight transmissions are subject to mountain block out. Also, the Forestry Research Division of Crown Zellerback commented that current line of sight limitations create many problems and add to the total cost of application as well a the cost of the wood produced. Further, the Helicopter Association of America in its comments concurred that use of the 420–450 MHz band would provide area coverage up to ten times greater than that now offered by line-of-sight ranging systems.

13. In addition to the inland applications listed and the desirable propagation advantages mentioned, equipment designed to operate in the 420–450 MHz band provides portability to facilitate operation. Portability is particularly important when positioning the transponders on the ground in connection with aerial applications. Temporary, seasonal or emergency applications such as combating forest fires are aided by the ease with which the system can be transported. Accordingly, the need for equipment transportability for inland operation is served by the use of radiolocation equipment designed to operate in the 420–450 MHz band.

V. Discussion

14. The Commission is proposing to allow inland use for non-Government radiolocation in this band. If such use is to be allowed, a major question which must be answered is what type of modulation and emission characteristics should be allowed. we are proposing to allow any form of modulation, including spread spectrum, with the provision that it will not cause interference to the other users of the band. The Commission's Rules do not specifically provide for the use of spread spectrum except on an experimental basis; however, footnote US 217 of Section 2.106 of the Rules presently does not exclude any pulse ranging system based on the technology utilized. Accordingly, the current usage of a pulse ranging radiolocation system employing spread spectrum techniques under the provisions of US 217 for operation on a non-interference basis to the higher priority users is considered permissible. A companion Notice of Inquiry on Spread Spectrum Techniques explores the implications for broader, future usage in connection with other Commission authorized applications. In the meantime, although the Commission is investigating spread spectrum techniques under a Notice of Inquiry, it appears that spread spectrum can be employed in this particular application with minimum potential for interference and we defer the general question of spread spectrum desirability until the conclusion of that inquiry.

15. Because the primary U.S. allocation of the 420–450 MHz frequency band is for Government radiolocation, Del Norte's petition was forwarded to the Interdepartment Radio Advisory Committee (IRAC) for their comments and for possible testing with Department of Defense systems to determine electromagnetic capability with spread spectrum operations. Without requiring field testing of Del Norte's proposed operation, IRAC concurred with the proposed spread spectrum usage and suggested modification of US 217 to delete the phrase "along the shorelines of" subject to evaluation on a case-by-case basis under existing Spectrum Planning Subcommittee (SPS) procedures and subject to protection of strategic geographical areas.

16. Operation on a non-interference, case-by-case condition was the basis for a recent Commission action authorizing the use of Government spread spectrum usage in an Aeronautical Radionavigation band. The Commission in Docket 78–231 [5] released on March 22, 1979 authorized Government systems using spread spectrum techniques to operate in the 960 to 1215 MHz band for terrestrial communications, navigation and identification. This action amended Section 2.106 of the Rules to add the Footnote US 224. Accordingly, with this precedent, and since there is no objection from the primary users on the use of the band on a non-interference, case-by-case basis as set forth in US 217, this proposed operation of a spread spectrum type pulse ranging system as

[5] See *Report and Order* FCC 79–155.

well as traditional pulse ranging systems is believed to be justifiable.

17. While Del Norte's petition proposes the use of a spread spectrum system, it does not do so to the exclusion of other radiolocation systems currently in use. Del Norte does suggest that a specification to limit output power might be incorporated into the rules for all non-Government radiolocation users to ensure that other users receive adequate protection from interference. In this regard, Del Norte suggests that transmissions be prohibited that exceed an interference potential of a normal AM or FM transmission of −90 dbm at the terminals of a receiver of 12 kHz band pass when radiated at a distance of 1000 feet using unity gain antennas. Although, the proposed standard may provide a frame of reference for non-Government radiolocation users employing spread spectrum systems, it could prove to be only an arbitrary standard particularly with regard to operations in the vicinity of those protected geographical areas set forth in Footnote US 7 of Section 2.106 of the FCC Rules. Comments are invited regarding the desirability of including such a standard in the Rules. Of course, the Commission's Notice of Inquiry mentioned earlier will consider technical standards for spread spectrum systems and it appears advisable to await the outcome of that proceeding before specifying signal levels. In the meantime, in view of the absence of any reported interference complaints from Government radiolocation and amateur radio users regarding past non-Government radiolocation operations, we are not proposing a specification in this proceeding but rather that continued consideration of transmitter power and antenna height data on a case-by-case basis is warranted.

18. To satisfy IRAC's concerns for protection of certain strategic geographic areas, identification and exemption of operation from those areas is necessary. IRC has reported that the areas to be protected are:

A. All areas listed in Footnote US 7.

B. Areas enclosed by circles of 100 miles radius centered on:

1. 41°45′ N., 70°32′ W.
2. 39°08′ N., 121°26′ W.
3. 64°17′ N., 149°10′ W.
4. 48°43′ N., 97°54′ W.

C. The White Sands Missile Range defined as the area bounded by 31°45′ N. to 34°30′ N. and 104°00′ W. to 107°30′ W.

It is proposed that these protected areas be published in Parts 2 and 90 of the Rules to assure compliance.

19. In addition to Government radiolocation operations in the band, amateur users have secondary allocation status and, accordingly, should be afforded protection from harmful interference. Any comments on the possible effects on amateur radio operations will receive careful evaluation.

20. Finally, let us briefly consider the question of monitoring and identifying radiolocation systems that employ spread spectrum technology. Although the low spectral power density of spread spectrum signals theoretically minimizes interference to non-spread spectrum systems, the Commission has no first hand experience to verify this. Until this can be verified, what safeguards should be taken? Should the Commission require the spread spectrum system to give some form of station identification? Thus in the event that interference occurs, the identity of the spread spectrum system could be easily determined by the station receiving the interference and by the FCC and the problem quickly resolved. Or should a procedure be established whereby spread spectrum licensees would notify the Commission's local engineer in charge of the particulars of each operation (dates, time, geographic location, etc.). This notification would be consistent with the present rules which do not require stations in the radiolocation services operating above 3400 kHz to identify except upon specific instructions from the Commission. The enforcement and identification issue will be explored more fully in the previously referenced Notice of Inquiry; however, comments regarding the necessity, as well as the techniques, for monitoring and identification as they pertain to the use of spread spectrum for radiolocation are invited in this proceeding.

VI. Proposals

21. Accordingly, it is proposed to amend Section 2.106, Footnote US 217; and by adding a new Footnote US 228 and to amend §§ 90.103(c)(21) and 90.177(e) to provide for non-Government radiolocation usage of the 420–450 MHz band in Alaska and the contiguous 48 states subject to the following conditions:

A. Operation is permitted on a secondary, non-interference basis to the Government Radiolocation Service and the Amateur Radio Services.

B. Authorizations will be granted on a case-by-case basis with particular attention given to the proposed power and antenna system requirements.

C. The geographical areas set forth in the new Footnote US 228 and § 90.177(e) will be excluded from operations authorized under Footnote US 217 and § 90.103(c)(21).

In addition, the usual coordination procedures with Canada and Mexico during licensing shall be employed when geographical considerations so require.

VII. Procedural Matters

22. For further information concerning procedures to follow with respect to this rulemaking proceeding, contact Sam Tropea (202) 653–8167.

23. The proposed amendments to Parts 2 and 90 of the rules as set forth in the Appendix, are issued pursuant to the authority contained in sections 4(i) and 303(c), (h) and (r) of the Communications Act of 1934, as amended.

24. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before September 21, 1981, and reply comments on or before October 21, 1981. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

25. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file,

with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules, 47 CFR 1.1231. A summary of these Commission procedures governing *ex parte* presentations in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554.

26. Because the enhanced spectrum use proposed herein is on a secondary, non-interference basis, it will have no impact on primary users who, in any event, are not businesses but government and amateur radio licensees. The opportunity to take advantage of the benefits of the 420–450 MHz band will be open to all present and potential users, large and small. There will be no record keeping or reporting requirements associated with use of these frequencies and it is expected that the additional spectrum will result in more efficient and economical use of radiolocation techniques. Therefore, we can think of no way the proposed action will affect the users of the devices in question except to create the opportunity to use more frequencies. Accordingly the Commission certifies that Sections 603 and 604 of the Regulatory Flexibility Act do not apply to this proceeding. See U.S.C. Section 605(b). It is ordered, that a copy of this Notice shall be sent to the Chief Council for Advocacy of the Small Business Administration.

27. In accordance with the provisions of § 1.419 of the Commission's Rules, an original and 5 copies of all statements, briefs or comments filed shall be furnished the Commission. Responses will be available for public inspection during business hours in the Commission's Public Reference Room in its headquarters in Washington, D.C.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

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

A. Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

In § 2.106, columns 5 through 11 of the allocation table for the band 420–450 MHz are revised, and under the heading U.S. FOOTNOTES, Footnote US 217 is revised and a new Footnote US 228 is added as follows:

§ 2.106 Table of Frequency Allocations

United States		Federal Communications Commission					
Band (MHz)—Col. 5	Allocation—Col. 6	Band (MHz)—Col. 7	Service—Col. 8	Class of station—Col. 9	Frequency (MHz)—Col. 10		Nature of Services of stations—Col. 11
420 to 450	G, NG, (320A), (US7), (US35), (US87), (US217), (US228).	420–450	Amateur, Amateur-Satellite	Amateur, Earth, Space.			AMATEUR, AMATEUR-SATELLITE.

U.S. Footnotes

* * * * *

US 217 Pulse-ranging radiolocation systems may be authorized for Government and non-Government use in the 420–450 MHz band in Alaska and the contiguous 48 States. Authorizations will be granted on a case-by-case basis and all stations operating in accordance with such authorizations will be secondary to stations operating in accordance with the allocation table. All power and antenna height specifications shall be made on a case-by-case basis.

* * * * *

US 228 In the band 420 to 450 MHz, no authorization will be granted under the provisions of Footnote US 217 for operation within the following geographic areas:

(a) All areas listed in Footnote US 7.

(b) In the State of Massachusetts within a 160 kilometers (100 miles) radius around the locations of Otis Air Force Base, Massachusetts (latitutde 41°45′ North, longitude 70°32′ West).

(c) In the State of California within a 160 kilometer (100 mile) radius around locations of Beale Air Force Base, California (latitude 39°08′ North, longitude 121°26′ West).

(d) In the State of Alaska, within a 160 kilometer (100 mile) radius around locations of Elmendorf Air Force Base, Alaska (latitude 64°17′ North, longitude 149°10′ West).

(e) In the State of North Dakota, within a 160 kilometer (100 mile) radius around locations of Grand Forks Air Force Base, North Dakota (latitude 48°43′ North, longitude 97°54′ West).

(f) Those portions of Texas and New Mexico bounded on the south by (latitude 31°45′ North, on the east by longitude 104°00′ West, on the north by latitude 34°30′ North, and on the West by longitude 107°30′ West.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

B. Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

1. Section 90.103(c)(21) is revised to read as follows:

§ 90.103 Radiolocation service.

* * * * *

(c) * * *

(21) Non-Government pulse-ranging radiolocation stations in this band may be authorized in Alaska and the contiguous 48 states and are secondary to the Government Radiolocation Service, the Amateur Radio Service and the Amateur Satellite Service. All power and antenna specifications shall be made on a case-by-case basis. See Section 90.177 for geographical areas exempted from operation.

* * * * *

2. Section 90.177 is amended by revising the introductory text and adding a new paragraph (e) as follows.

§ 90.177 Protection of certain radio receiving locations.

This section pertains to applications for new or modified authorizations in the vicinity of the National Radio Astronomy Observatory, Green Bank, Pocahontas County, W. Va., the Naval Radio Research Observatory, Sugar Grove, Pendleton County, W. Va., the Table Mountain Radio Receiving Zone, Boulder, Co., Federal Communications Commission monitoring stations and other protected sites.

* * * * *

(e) In the band 420 to 450 MHz, no authorizations will be granted for stations within 160 kilometers (100 miles) of the following locations:

(1) 41°45′ N, 70°32′ W,

(2) 39°08′ N, 121°26′ W,
(3) 64°17′ N, 149°10′ W,
(4) 48°43′ N, 97°54′ W;

within 320 kilometers (200 miles) of the following locations:

(1) 28°21′ N, 80°43′ W,
(2) 30°30′ N, 86°30′ W,
(3) 34°09′ N, 119°11′ W,

or in any of the following locations

(1) The state of Arizona,
(2) The state of Florida,
(3) Portions of California and Nevada south of 37°10′ N,
(4) And portions of Texas and New Mexico bounded by 31°45′ N, 34°30′ N, 104°00′ W, and 107°30′ W.

[FR Doc. 81-22416 Filed 7-30-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[Docket No. 21136]

Noncommercial Nature of Educational Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Petitions for Reconsideration and Petition for Clarification; Extension and consolidation of comment periods.

SUMMARY: Action take herein consolidates dates to file comments and reply comments to petitions for reconsideration and clarification filed in response to the *Second Report and Order* adopted April 23, 1981, concerning the noncommercial nature of educational broadcast stations (Docket No. 21136). The consolidation will facilitate efficient resolution of the matters raised in the various petitions.

DATES: Comments must be filed on or before July 28, 1981; reply comments must be filed on or before August 7, 1981.

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

FOR FURTHER INFORMATION CONTACT: John B. Monahan, Broadcast Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION:

Adopted: July 17, 1981.

Released July 20, 1981.

By the Chief, Policy and Rules Division.

In the Matter of Commission policy concerning the noncommercial nature of Educational Broadcast Stations; *order extending time and consolidating comment periods.*

1. The Commission has before it a Motion for Consolidation and a Motion for Extension of Time for filing comments and reply comments to various petitions for reconsideration and clarification filed in response to the Commission's action in the *Second Report and Order*, 86 FCC 2d 141 (1981) released May 22, 1981. The Motion for Extension of Time, filed on behalf of the Public Broadcasting Service, requests extension of time to respond to the Petition for Reconsideration filed by the Committee to Save KQED, *et. al.* The Motion for Consolidation, filed by the law firm of Schwartz, Woods and Miller on behalf of various public broadcast clients, requests consolidated consideration of all petitions for reconsideration in this proceeding.

2. Three petitions for reconsideration or clarification have been filed: The Petition for Reconsideration, filed by the Committee to Save KQED *et. al.* and published in the **Federal Register** on June 26, 1981, [46 FR 33100];[1] and a Petition for Clarification, filed by the Metropolitan Opera Association, and Petition for Partial Reconsideration filed by the National Association of Broadcasters, both published in the **Federal Register** on July 14, 1981 [46 FR 36245].[1]

3. Pursuant to § 1.429(f) of the Commission's Rules and Regulations, 47 CFR § 1.429(f), opposition to these petitions must be filed within 15 days after notice of their filing has been published in the **Federal Register**. At present, oppositions to the KQED Petition for Reconsideration were due July 13, 1981. Oppositions to the Petition for Clarification and the Petition for Partial Reconsideration must be filed by July 28, 1981. It would be desirable in terms of administrative efficiency and public convenience that parties submit their comments and reply coments to these petitions as part of a single filing. However, as the deadlines for filing are presently set, a party filing a single opposition addressing itself to issues raised by more than one of the three petitions must make multiple filings. The Commission desires to gather as thorough and meaningful a record as practicable on the contested issues. At the same time, we wish to do so in a most administratively efficient manner. We believe that the consolidation of these three matters under a single deadline for filing oppositions would accomplish these two goals. Further, we perceive no harm to any party and, in fact, believe it to be in the public interest to establish a single date by which all oppositions to the three petitions must be filed. Therefore, we consolidate the due dates in this *Order.*

4. Accordingly, it is ordered, That the Motion for Consolidation filed by Schwartz, Woods and Miller, and the Motion for Extension of Time filed by the Public Broadcasting Service are hereby granted. The date for filing comments in response to the Petition for Reconsideration filed by KQED, *et. al.*, is hereby extended to and including July 28, 1981. Reply comments are due on or before August 7, 1981.

5. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended and § 0.281 of the Commission's Rules and Regulations.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-22374 Filed 7-30-81; 8:45 am]

BILLING CODE 6712-01-M

[1] Note: These petitions were published in the notices section of the **Federal Register.**

47 CFR Part 97

[Docket No. 21135; FCC 81-123]

Simplification of the Licensing and Call Sign Assignment Systems for Stations in the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Denial of petition for reconsideration and termination of docket.

SUMMARY: This document denies a *Petition for Reconsideration* of the Commission's action in its *Third Report and Order* in Docket No. 21135, determining that no new licenses would be issued for Club, Military Recreation, and RACES amateur radio stations, except for modification or renewal of licenses. The *Petition for Reconsideration* was filed by the Capitol Hill Amateur Radio Society. This document also closes the docket.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau Federal Communications Commission Washington, DC 20554, (202) 632-7597.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

Adopted: March 26, 1981.

Released: April 7, 1981.

In the matter of the simplification of the licensing and call sign assignment systems for stations in the Amateur Radio Service. Docket No. 21135.

By the Commission: Chairman Ferris not participating.

1. The Commission has before it a *Petition for Reconsideration* of the action it took in Docket No. 21135 in its *Third Report and Order*, FCC 80-285, 45

FR 40117 (June 13, 1980). The petition was filed on July 11, 1980, by the Capitol Hill Amateur Radio Society. Informal comments regarding this petition were filed by the Oral Roberts University Amateur Radio Outreach Club.[1] [2]

Background

2. In the *Notice of Proposed Rulemaking* in Docket 21135, FCC 77-156, 42 FR 15438 (1977), the Commission proposed several revisions of its Amateur Radio Service Rules, 47 CFR § 97.1 *et seq.* Briefly, the proposals in this proceeding were to simplify the licensing structure in the Amateur Radio Service by discountinuing the issuance of all types of amateur station licenses except space stations[3] and "primary" station licenses, thus eliminating the separate license provisions for:

(a) Repeater, auxiliary link and control stations;

(b) Military recreation stations;

(c) Club stations;

(d) Secondary stations;

(e) Special event stations; and

(f) Radio Amateur Civil Emergency Service (RACES) stations.

An immediate "closed season" was imposed on the filing of applications for special event stations and new secondary stations. We also proposed to simplify regulations concerning the assignment of call signs in the Amateur Radio Service by replacing the current rules with a concise rule stating that call signs will, in almost all instances, be assigned by the Commission on a systematic basis.

3. In our *First Report and Order* in Docket 21135, FCC 78-76, 43 FR 7320 (February 22, 1978), we discontinued the issuance of secondary and special event station licenses and deleted from the rules all but one of those provisions which previously allowed certain licensees to select specific call signs or call sign formats. In a *Further Notice of Proposed Rule Making* in this docket, FCC 78-77, 43 FR 7332 (1978), we proposed to continue Club, Military Recreation and RACES stations on a scaled-down basis. In a *Second Report and Order* in this proceeding, FCC 78-211, 43 FR 15325 (April 12, 1978), we eliminated "WR" call signs, but allowed licensees now assigned "WR" call signs to continue to use them until the expiration of their station licenses.

4. In the *third Report and Order* in Docket 2135, *supra*, we determined that no new licenses would be issued for Club, Military Recreation, and RACES amateur radio stations, except for modification or renewal of licenses. This terminated thr porceeding and closed Docket 21135. The action taken in the *Third Report and Order* eliminating new club licenses is the subject of the instant *Petition for Reconsideration*. Petitioner seeks reconsideration on two grounds:

(a) Procedural.

(2) Failure to consider the public interest.

Procedure

5. Petitioner contends that the amended rules adopted in this proceeding's *third Report and Order, supra*, as set forth in 47 CFR §§ 97.37 and 97.171, were not, onsofar as they apply to club station licenses, adopted in a manner consistent with the Administrative Procedure act, 5 U.S.C. 551 *et seq.* Specificallly, petitioner claims that we failed to consider, in relation to clubs, an alternative which petitioner and others had proposed—namely, to continue the present system of issuing club station call signs from the regular format calls. Petitioner believes such a failure to consider a proposed alterntive would be violative of the provisions of 5 U.S.C. 706 (A) and (B) [sic]. Title 5, U.S.C. 706(2)(A) and (B) states in pertinent part:

> The reviewing court shall—* * * (2) old unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; * * * (D) without observance of procedure required by law.

6. In rulemaking proceedings, this general standard of judicial review upon which petitioner relies is governed by the more specific statutory constraints for administrative procedure for rule making in 5 U.S.C. 553. Specifically, the procedureal requisities for delineating alternatives considered by an agency in a rule making are set forth in 5 U.S.C. 553(c), which states in pertinent part:

> After consideration of the relevant matter presented, the agency shall incorporate in the Rules adopted a concise general statement of their basis and purpose.

It is clear from case law about this statement of basis and purpose that in rule making, an agency is not required to supply specific and detailed findings and conclusions, but need only state, in concise or succinct terms, the major issues of policy raised by the proceeding and why the agency reacted to them as it did. *Van Curler Broadcasting Corp.* v. *United States, 98 U.S. App. D.C. 432, 236 F. 2d 727, 14 RR 2001, cert. den.* 352 U.S. 935, 77 S. Ct. 226, 1L. Ed. 2d 163 (1956); *American Medical Association* v. *Matthews,* 429 F. Supp. 1179 (N.D. Ill. 1977), the requirement of a statement of basis and purpose is not a mandate to refer to all specific issues raised in comments on proposed rule making. *Kennecott Copper Corp.* v. *Environmental Protection Agency,* 149 U.S. App. D.C. 231 (1972).[4] The statement of basis and purpose need not demonstrate *per se* that all relevant evidence presented and comments made were considered. *Logansport Broadcasting Corp.* v. *United States,* 210 F. 2d 24, 28, 10 R.R. 2008 (D.C. Cir. 1954). Nonetheless, as discussed in paragraphs eight through ten herein, the docket record *does* reflect consideration of petitioner's concerns.

7. In the instant case, petitioner claims that the alternative of continuing the present system of issuing club station call signs from regular format calls was not considered. Petitioner cites discussions at open Commission meetings and the text of the *Third Report and Order, supra,* to support this claim. Petitioner's references to deliberations in open Commission meetings are inapposite. It has always been our policy to treat discussion in open meetings as nothing more than just that—discussion. We recently codified this policy in § 0.602 (c) and (d) of our Rules, which state:

> (c) The right of the public to observe open meetings does not alter those rules in this Chapter which relate to the filing of motions, pleadings, or other documents. Unless such pleadings conform to the other procedural requirements of this Chapter, pleadings based upon comments or discussions at open meetings, as a general rule, will not become part of the official record, will receive no consideration, and no further action by the Commission will be taken thereon.

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[1] Although characterized as informal comments regarding the *Petition for Reconsideration* of the Capitol Hill Amateur Radio Society, the gravamen of the comments is a claim of discrimination between clubs holding previously issued call signs and clubs presently unable to get a new call sign. As such, this document should be treated as a Petition for Reconsideration. However, this petition was received by the Commission on September 29, 1980, more than thirty days after the *Third Report and Order* Thus, it is untimely under § 1.429(d) of the Rules, and is hereby dismissed.

[2] On September 10, 1980, the Commission received a request to "rescind its decision on Docket 21135" in relation to club and RACES stations from the Bethel Middle School Amateur Radio Club. We will treat this as a petition for reconsideration. It was received by the Commission more than thirty days after the *Third Report and Order.* As such, it is untimely under § 1.429(d) of the Rules, and is hereby dismissed.

[3] In a *Report and Order* (FCC 80-419) in a separate docket, Docket No. 19852, the Commission eliminated space station licenses and, in the stead, defined the parameters of space operation by amateur radio stations and operators.

[4] Thus, petitoner's assertion that we must address the consequence of one of many particular issues, such as club funding, is misplaced. In fact, we concluded that claims of potential funding difficulties were speculative at best, and as such, did not outweigh our need to limit our licensing functions to primary station licenses.

(d) Deliberations, discussions, comments or observations made during the course of open meetings do not themselves constitute action of the Commission. Comments made by Commissioners may be advanced for purposes of discussion and may not reflect the ultimate position of a Commissioner 47 CFR 0.602(c), (d).

The discussions during open Commission meetings are not part of any formal rule making action, and are not properly relied upon for any purpose by petitioner.

8. Petitioner claims we did not consider the alternative of continuing to license new club stations and assigning these new club stations call signs from regular format calls. This alternative was the old club call sign assignment scheme. When we issued our *Notice of Proposed Rule Making, supra,* and our *Further Notice of Proposed Rule Making, supra,* we proposed, first, doing away with club licenses, and, later, retaining club licenses while severely limiting eligibility for club call sign assignment. Naturally, one alternative to these proposals was to adopt neither of them, which would have resulted in maintenance of the *status quo—i.e.,* the alternative petitioner claims we did not consider. We submit that the alternative of maintaining the *status quo* is inherently subsumed in any agency's consideration of changing its rules. We most certainly did consider that alternative.

9. We did not opt for the "*status quo*" alternative for the reason set forth in paragraph one of the *Third Report and Order, supra:* because we wanted "to simplify our application processing system in order to provide an efficient licensing service to the public, within our manpower and resource allocations." As we stated in the original *Notice of Proposed Rule Making,* at paragraph 4:

> Our resources have not kept pace with the increased demand for personal radio communications. Given these limited resources, we have been forced to assign priorities to our current licensing activities. *We believe our most important task in the Amateur Radio Service to be the processing and issuance of amateur operator and primary station licenses.* We have reached the point at which our lack of resources simply precludes all but the most basic licensing functions. Our regulatory obligations have outstripped our current capabilities.[5]

When combined with our view that separate licensing of club stations, which may be held by a "club" of as few as two persons, was non-essential, see *Third Report and Order,* Para. 10(c), we concluded that the alternative petitioner contends we overlooked—the *status quo*—was untenable.

10. Thus, we considered the *status quo* option petitioner claims we overlooked, and rejected it. Moreover, we have satisfied the Administrative Procedure Act's requisite of a statement of basis and purpose for our action eliminating the issuance of new club licenses.

Public Interest

11. Petitioner claims the amended rules eliminating new club licenses contravene the public interest in fostering amateur radio growth to serve the public in times of emergency. Petitioner states that amateur radio clubs serve the public interest by encouraging an active amateur radio corps willing, ready, and equipped to serve as vital communications links at times of natural disasters. Petitioner maintains that eliminating future club station licenses lessens the likelihood of such emergency preparedness.

12. Operations now conducted by club stations may, in the future, be conducted either by club members operating their stations portable or by club members acting as control operators of another club member's station. Thus, we do not believe that elimination of club licenses will result in any disinclination to form amateur radio clubs. Additionally, we do not believe that educational or other institutions will necessarily stop funding amateur radio clubs just because the clubs no longer will be issued separate licenses.

13. In any event, petitioner's public interest argument raises no new or novel arguments. The Commission will not grant reconsideration "merely for the purpose of again debating matters on which [it] has once deliberated and spoken." *WWIZ, Inc.* 37 F.C.C. 685 (1964), *aff'd. sub nom., Lorain Journal Company v. F.C.C., 122 U.S. App. D.C. 127, 351 F. 2d 824 (1965), cert. dew.* 383 U.S. 967 (1966); *In Re Cable TV Co.,* 33 F.C.C. 2d 787 (Rev. Bd. 1972). Thus, Capitol Hill Radio Society's public interest claim does not itself warrant grant of the instant Petition for Reconsideration.

Conclusion

14. For all the reasons set forth above, the instant *Petition for Reconsideration* should be denied. Accordingly, it is ordered That the *Petition for Reconsideration* of the Capitol Hill Amateur Radio Society is denied. This proceeding is hereby terminated and the docket is close.

15. For further information on this Memorandum Opinion and Order, contact John J. Borkowski, (202) 632–7597.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81–22335 Filed 7–30–81; 8:45 am]

BILLING CODE 6712–01–M

[5] We discontinued issuance of new non-primary station licenses, including new club station licenses, because non-primary station licenses accounted for roughly 50% of our processing person-hours while constituting only 5% of the total number of licenses. Our obligation to the general public and to amateur licensees to use the public's tax dollars in the most efficient manner mandated simplication of the licensing and call sign assignment systems in the Amateur Radio Service.

Notices

Federal Register
Vol. 46, No. 147
Friday, July 31, 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

Agricultural Marketing Service

[Marketing Agreement 146]

Budget of Expenses of Administrative Committee and Rate of Assessment for 1981 Crop Year

Pursuant to Marketing Agreement 146, regulating the quality of domestically produced peanuts (30 FR 9402), and upon recommendation of the Peanut Administrative Committee established pursuant to such agreement and other information, it is hereby found and determined that the expenses of said Committee and the rate of assessment applicable to peanuts produced in 1981 and for the crop year beginning July 1, 1981, shall be as follows:

(a) *Administrative expenses.* The budget of expenses for the Committee for the crop year beginning July 1, 1981, shall be in the total amount of $630,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the Committee, and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the Committee for indemnification payments, pursuant to the Terms and Conditions of Indemnification Applicable to 1981 Crop Peanuts, effective July 1, 1981, are estimated at, but may exceed $3.5 million, such amount being reasonable and likely to be incurred. Such 1981 expenses will be paid with funds from the indemnification reserve.

(c) *Rate of assessment.* Each handler shall pay to the Peanut Administrative Committee, in accordance with § 48 of the marketing agreement, an assessment of the rate of $0.42 per net ton of farmers stock peanuts received or acquired other than those described in § 31 (c) and (d) ($0.42 for administrative expenses and $0.00 for indemnification expenses).

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop year pursuant to § 48 of the marketing agreement, shall continue. That portion of the total assessment funds accrued from previous crop years and not expended in providing indemnification on the 1981 crop peanuts shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

The expenses and rate of assessment are, under the agreement, on a crop year basis and will automatically be applicable to all assessable peanuts from the beginning of such crop year. The handlers of peanuts who will be affected hereby have signed the marketing agreement authorizing approval of expenses that may be incurred and the imposition of assessments; they are represented on the Committee which has submitted the recommendation with respect to such expenses and assessment for approval; and handlers have had knowledge of the foregoing in their recent industry-wide discussions and will be afforded maximum time to plan their operations accordingly.

Dated: July 28, 1981.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 81-22415 Filed 7-30-81; 8:45 am]

BILLING CODE 3410-02-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended July 24, 1981

Subpart Q—Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
7-21-81	39837	South Pacific Island Airways, Inc., c/o Stephen A. Alterman, Esq. Hafler & Alterman, 1730 Rhode Island Avenue, N.W., Application of South Pacific Island Airways, Inc. requests the board pursuant to Section 401 of the Act and Part 201 of the Board's Economic Regulations and Subpart Q of the Board's Procedural Regulations, for a certificate of public convenience necessity to provide scheduled, large aircraft service between and among Honolulu, Hawaii and Agana, Guam. Conforming Applications, motions to modify scope, and Answers may be filed by August 18, 1981
7-21-81	39838	Alaska Airlines, Inc., Seattle-Tacoma International Airport, Seattle, Washington 98188. Application of Alaska Airlines, Inc. requests the Board pursuant to Section 401 of the Act and subpart Q of the Board's Procedural Regulations, for an amendment to its certificate of public convenience and necessity of segment one for Route 124 authorizing the air transportation of persons, property and mail on a permissive basis between (points to be added are underlined): the new terminal point: *Adak Island, Alaska The intermediate points: Anchorage, Alaska, Angoon, Alaska, Aniak, Alaska,* Annette Island, Alaska, Baltimore, Maryland, Barrow, Alaska, Bethel, Alaska, Billings, Montana, Boswell Bay (Kenny Cove), Alaska, Burbank, California, Cape Yakataga, Alaska, Chatham, Alaska, Chicago, Illinois, Chisana, Alaska, Chitina, Alaska, *Cold Bay, Alaska,* Cordova, Alaska, Craig, Alaska, Dallas-Ft. Worth, Texas, Denver, Colorado, Detroit Michigan, *Dillingham, Alaska,* Fresno, California, Funter Bay, Alaska, *Galena, Alaska,* Great Falls, Montana, Gulkana, Alaska, Gustavus, Alaska, Haines, Alaska, Hawk Inlet, Alaska, *Homer, Alaska,* Honolulu Hawaii, Hoonah, Alaska, Houston, Texas, Hydaburg, Alaska, Icy Bay, Alaska, *Illamna, Alaska,* Juneau, Alaska, Kake, Alaska, Kansas City, Missouri, Kenai, Alaska, *King Salmon, Alaska,* Ketchikan, Alaska, Klawak (Klawock), Alaska, *Dutch Harbor, Alaska,* Elfin Cove, Alaska, Excursion Inlet, Alaska, Fairbanks, Alaska, Los Angeles, California, May Creek, Alaska, McCarthy, Alaska, McGrath, Alaska, Middleton Island, Alaska, Minneapolis-St. Paul, Minnesota, Missoula, Montana, Nome, Alaska, North Dutch Island, Alaska, Oakland, California, Ontario, California, Pelican City, Alaska, Petersburg, Alaska, Philadelphia, Pennsylvania, Phoenix, Arizona, Portland, Oregon, Prudhoe Bay, Alaska, Reno, Nevada, Rockford, Illinois, Kodiak, Alaska, Kotzebue, Alaska, Las Vegas, Nevada, Long Beach, California, Sacramento, California, Saginaw Bay, Alaska, Salt Lake City, Utah, San Diego, California,

Date filed	Docket No.	Description

San Francisco, California, San Jose, California, Seattle-Tacoma, Washington, *Shemya Island, Alaska*, Sitka, Alaska, Skagway, Alaska, Spokane, Washington, Stockton, California, Tatitlek, Alaska, Tenakee, Alaska, Tucson, Arizona, Unalakleet, Alaska, Valdez, Alaska, Washington, D.C., Wrangell, Alaska; and the terminal point: Yakutat, Alaska

Alaska requests that its certificate of public convenience and necessity for Route 124 be amended to authorize the air transportation of mail only on a permissive basis between the coterminal points: Akhiok, Alaska and any point within the State of Alaska listed on segment one; the intermediate points: Aleknagik, Alaska, Altakeket, Alaska, Amchitka Island, Alaska, Anaktuvuk Pass, Alaska, Arctic Bay, Alaska, Atigun, Alaska, Atka, Alaska, Attu Island, Alaska, Barter Island (Katkovik), Alaska, Beaver, Alaska, Bettles, Alaska, Big Lake, Alaska, Central, Alaska, Chandalar, Alaska, Chandalar Shelf, Alaska, Chalkyitsik, Alaska, Chauthbaluk, Alaska, Chicken, Alaska, Chignik Lagoon, Alaska, Circle, Alaska, Circle Hot Springs, Alaska, Clarks Point, Alaska, Cold Bay, Alaska, Coldfoot, Alaska, Delta Junction, Alaska, Dietrich, Alaska, Eagle, Alaska, Egegik, Alaska, Ekuk, Alaska, Ekwok, Alaska, False Pass, Alaska, Farewell, Alaska, Five Mile, Alaska, Flat, Alaska, Fort Yukon, Alaska, Franklin Bluffs, Alaska, Galbraith Lake, Alaska, Golden Horn, Alaska, Happy Valley, Alaska, Haycock, Alaska, Hogatza, Alaska, Hughes, Alaska, Husila, Alaska, Igiugig, Alaska, Ivanoff Bay, Alaska, Isabelle Pass, Alaska, Kalaket, Alaska, Kaltag, Alaska, Karluk, Alaska, Kitoi Bay, Alaska, Koliganek, Alaska, Koyukuk, Alaska, Lake Minchumina, Alaska, Larsen Bay, Alaska, Lazy Bay-Alitak, Alaska, Levelock, Alaska, Livengood, Alaska, Manley Hot Springs, Alaska, Mancokotak, Alaska, Medfra, Alaska, Minto, Alaska, Moser Bay, Alaska, Moses Point, Alaska, Nakeen, Alaska, Naknek, Alaska, Nerka Lake, Alaska, New Stuyahok, Alaska, Northeast Cape, Alaska, Nulato, Alaska, Old Harbor, Alaska, Old Man, Alaska, Olga Bay, Alaska, Ouzinkie, Alaska, Port Bailey, Alaska, Port Heiden, Alaska, Port Lions, Alaska, Portage Creek, Alaska, Prospect Creek, Alaska, Queen, Alaska, Rampart, Alaska, Ruby, Alaska, St. George Island, Alaska, St. Michael, Alaska, St. Paul Island, Alaska, San Juan, Alaska, San Point, Alaska, Sarichef-Scotch Gap, Alaska, Seal Bay, Alaska, Seward, Alaska, Sitkinak, Alaska, Skwentna, Alaska, South Naknek, Alaska, Stevens Village, Alaska, Takotna, Alaska, Tanana, Alaska, Tatalina, Alaska, Terror Bay, Alaska, Tikchik Lake, Alaska, Togiak, Alaska, Twin Hills, Alaska, Tununak, Alaska, Ugashik, Alaska, Umiat, Alaska, Ufopia, Alaska, Venetie, Alaska, Wainwright, Alaska, West Point-Village Isle, Alaska, Wiseman, Alaska, Wood River, Alaska; and the terminal point: Zachar Bay, Alaska.

Conforming Applications, motions to modify scope, and answers may be filed by August 18, 1981.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-22318 Filed 7-30-81; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Certain Fasteners From India; Preliminary Results of Administrative Review of Contervailing Duty Order

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain fasteners from India. The review covers the period from July 21, 1980, through December 31, 1980. The Government of India has declined to respond to our request for updated information regarding this merchandise; therefore, the Department has tentatively determined, using our final determination on this case as the best information available, that the *ad valorem* rate of net subsidy is 18 percent. As a result of this review the Department has preliminarily determined to assess countervailing duties equal to that rate on the f.o.b. invoice price of the merchandise entered during the period of the review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 31, 1981.

FOR FURTHER INFORMATION CONTACT: Joseph A. Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Room 2803, Washington, D.C. 20230 (202-377-1774).

SUPPLEMENTARY INFORMATION:

Procedural Background

The Department of Commerce ("the Department") published a notice of "Final Countervailing Duty Determination and Countervailing Duty Order" in the **Federal Register** of July 21, 1980 (45 FR 48607). The notice stated that the Department had determined that the Government of India has provided bounties or grants (subsidies) on the production or exportation of certain fasteners within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) ("the Tariff Act"). The Department published in the **Federal Register** of March 16, 1981 (46 FR 16921) a notice of intent to conduct an administrative review of this countervailing duty order. As required by section 751 of the Tariff Act, the Department has conducted an administrative review of the order on certain fasteners from India.

Scope of Review

The imports covered by this review are industrial fasteners. This merchandise is currently classifiable in the Tariff Schedules of the United States under item numbers 646.49, 646.54, 646.56, 646.58, 646.60 and 646.63. The review covers the period July 21, 1980, the date of the final determination, through December 31, 1980 and is limited to the programs cited in the final determination. These programs are: (1) cash rebates on export, that is, "Cash Compensatory Support" ("CCS"), (2) preferential export financing and (3) a deduction from taxable income up to 133 percent of overseas business expenses.

Analysis of Programs

The Government of India has officially declined to respond to our questionnaire requesting information on the status of benefits bestowed under these three programs on fasteners during the review period. Therefore, the Department is using the rates published in the final determination on this merchandise as the best information available. As cited in the final determination the *ad valorem* benefit found under the CCS program was 17.5 percent; under preferential export financing, 0.4 percent; and under the export tax deduction program, 0.1 percent.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the total net subsidy conferred by the programs cited above is 18 percent *ad valorem*. Accordingly, the Department intends to instruct the Customs Service to assess countervailing duties of 18 percent of the f.o.b. invoice price on the merchandise entered, or withdrawn from warehouse, for consumption from July 21, 1980 through December 31, 1980.

This case is currently before the Court of International Trade. Liquidation of all entries covered by the original order has been enjoined pending the results of that litigation. Therefore, our instructions regarding assessment will not be given until the completion of that litigation. The current requirement for a deposit of estimated countervailing duty of 18 percent of the f.o.b. invoice price will continue until further notice.

Interested parties may submit written comments on these preliminary results on or before August 31, 1981 and may request disclosure and/or a hearing within 15 days of the date of publication. The Department will publish the final results of this administrative review after analysis of

issues raised in written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

July 27, 1981.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 81-22317 Filed 7-30-81; 8:45 am]

BILLING CODE 3510-25-M

Canned Tomato Paste From France; Final Results of Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review and Revocation of Countervailing Duty Order.

SUMMARY: On May 26, 1981, the Department of Commerce published in the **Federal Register** a notice of "Preliminary Results of Administrative Review of Countervailing Duty Order and of Tentative Determination to Revoke" with respect to canned tomato paste from France. Reasons for the tentative determination were given in the notice and interested parties were afforded an opportunity to present written or oral views. The Department received no comments. Therefore, the Department is revoking this order on the grounds that the subsidy practices cited in the final determination have been terminated. The merchandise remained covered by the order on tomato products from the European Communities.

EFFECTIVE DATE: July 31, 1981.

FOR FURTHER INFORMATION CONTACT: Joseph A. Black or Josephine A. Russo, Office of Compliance, Room 2803, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-1774 or 377-1168).

SUPPLEMENTARY INFORMATION:

Procedural Background

A notice of "Final Countervailing Duty Determination," T.D. 68-111, was published in the **Federal Register** of April 19, 1968 (33 FR 6010) imposing countervailing duties on canned tomato paste from France. The effective date of this order was May 19, 1968. On August 22, 1979, a notice of "Final Countervailing Duty Determination" was published in the **Federal Register** (44 FR 49248) regarding exports of tomato products from the European Communities ("the EC"). On May 26, 1981, the Department of Commerce ("the Department") published the preliminary results of its administrative review and a tentative determination to revoke the countervailing duty order on canned tomato paste from France (46 FR 28205).

Scope of the Review

Imports covered by this review are canned tomato pastes, currently classifiable under item number 141.65 of the Tariff Schedules of the United States (TSUS).

The preliminary results of the review stated that the imported merchandise no longer benefitted from subsidies from the Government of France and the entries of this merchandise were covered by a subsequent countervailing duty order on tomato products from the EC. The International Trade Commission found no injury by reason of the EC subsidies and we revoked the order on tomato products from the EC on October 20, 1980. Interested parties were afforded an opportunity to furnish oral or written comments. The Department received no such comments.

Final Results of the Review

As a result of the review, we conclude that the imported merchandise no longer benefits from net subsidies from the Government of France. Therefore, in accordance with section 355.42(c)(2) of the Commerce Regulations, the Department hereby revokes the countervailing duty order concerning canned tomato paste from France (T.D. 68-111) with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after April 21, 1981. There are no known unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption prior to August 22, 1979, the effective date of the order on tomato products from the EC. Since any entries of French canned tomato paste only received subsidies under the programs of the EC since that date, entries made on or after August 22, 1979, through December 31, 1979, will be liquidated in accordance with the EC order. The revocation on tomato products from the EC required liquidation of all entries made on or after January 1, 1980, without regard to countervailing duties. Consequently, the Department will instruct Customs officers to proceed with liquidation of all entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1980, without regard to countervailing duties.

We are discontinuing the practice of updating the table in Annex III to Part 355 of the Commerce Regulations. Instead, interested parties may contact the Director of the Office of Compliance, International Trade Administration, for copies of the updated list of countervailing duty orders.

This revocation, administrative review, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1), (c)) and sections 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 81-22366 Filed 7-30-81; 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 commodities to be produced by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: July 31, 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 15, 1981, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (46 FR 26808) of proposed additions to Procurement List 1981, November 12, 1980 (45 FR 74836).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodities are hereby added to Procurement List 1981:

Class 8415

Pad, Helmet, Flight Deck Crewman's, 8415-00-178-6830 (Back), 8415-00-178-6831 (Front)

E. R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 81-22388 Filed 7-30-81; 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 a commodity to be produced by and a service to be provided by workshops for the blind and other severaly handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 2, 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 commodity and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1981, November 12, 1980 (45 FR 74836):

Class 8465

Strap, Webbing, LC–1; 8465–00–269–0481

SIC 7349

Janitorial Service, Internal Revenue Service, 120 Church Street, New York, New York

E. R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 81–22337 Filed 7–30–81; 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 105. 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 105 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: July 24, 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 ws 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 105.

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 employes 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 whiich 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 104 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 Bulletin 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	89.00
Deadhorse	94.00
Dillingham	103.00
Dutch Harbor	82.00
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
Petersburgh	82.00
Prudhoe Bay	94.00
Sheyrna 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]	16.75
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)	68.00
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	128.00
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 ratre 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 28, 1981.

[FR Doc. 81-22339 Filed 7-30-81; 8:45 am]

BILLING CODE 3810-01-M

Air Force Department

Determinations of Active Military Service and Discharge; Civilian or Contractual Personnel

In accordance with Pub. L. 95-202, Section 401 (The G.I. Bill Improvement Act of 1977) and under the provisions of DODD 1000.20, Determinations of Active Military Service and Discharge: Civilian or Contractual Personnel, The Secretary of the Air Force, acting in accordance with authority delegated to him by the Secretary of Defense, determined on July 17, 1981, that the service of the members of the group known as the Male Civilian Ferry Pilots, be considered active military service in the Armed Forces of the United States for all laws administered by the Veterans' Administration.

In addition, the Secretary also determined on July 17, 1981, that the service of the members of the following groups not be considered active military service in the Armed Forces of the United States for purposes of all laws administered by the Veterans' Administration: AAF Civilian Maintenance Instructors; Auxiliary Military Police in World War II; Air Service Command Maintenance Workers; and Civilian Highway Traffic Engineers.

For further information contact: Technical Sergeant Stephen J. Koegle, USAF, telephone: 694-5380, Office of the Secretary of the Air Force Personnel Council, (SAF/MIPC), The Pentagon, Washington DC 20330.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 81-22343 Filed 7-30-81; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Advisory Panel on Financing Elementary and Secondary Education; Meeting

AGENCY: Advisory Panel on Financing Elementary and Secondary Education.

ACTION: Notice subcommittee meeting.

SUMMARY: This notice is to inform the general public of its opportunity to attend the forthcoming subcommittee meeting of the Advisory Panel on Financing Elementary and Secondary Education. This notice sets forth the schedule and proposed agenda for meeting and describes the functions of the Advisory Panel. Notice of the meeting is required under the Federal Advisory Committee Act, Section 10(a)(2).

TENATIVE SCHEDULE: August 18 and 19, 1981, 9:00 a.m.-5:00 p.m., Brown Building, Room 823, 1200 19th Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Will S. Myers, Executive Director, Advisory Panel on Financing Elementary and Secondary Education, P.O. Box 19128, Washington, D.C. 20036, (202) 653-8278.

SUPPLEMENTARY INFORMATION: The Advisory Panel on Financing Elementary and Secondary Education was established by Section 1203, Title XII of the Education Amendments of 1978 (Pub. L. 95-561). The Panel provides the Secretary and the Congress with advice and counsel concerning public policies on raising and distributing revenues to support elementary and secondary education. The Advisory Panel also provides advice to the Secretary concerning the conduct of studies authorized by Section 1203. The Advisory Panel will make interim reports to the President and the Congress in 1981 and 1982 and a final report in 1983. The Advisory Panel will also provide recommendations for legislation or other appropriate action to Congress.

AGENDA: Working sessions to draft the Advisory Panel's annual report. Records are kept of all Advisory Panel proceedings and are available for public inspection at the office of the Advisory Panel on Financing Elementary and Secondary Education located as 1200 19th Street, N.W., Suite 725, Washington, D.C.

Signed as Washington, D.C. on July 27, 1981.

Will S. Myers,

Executive Director, Advisory Panel on Financing Elementary and Secondary Education.

[FR Doc. 81-22359 Filed 7-30-81; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Issuance of an Order Granting a Permanent Exemption; City of New Smyrna Beach

The Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of its issuance of an Order granting a permanent exemption, pursuant to section 312(h) of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act), and the implementing regulations thereunder (10 CFR 501.68 and 10 CFR Part 504). An exemption from the natural gas use prohibitions of section 301(a) of the Act is granted to the following powerplant:

Docket No.	Petitioner	Generating station	Powerplant identification
52031-0681-01-41.	City of New Smyrna Beach.	Swoope	#1

The Order is set forth following this Notice and has been sent by certified mail to the Petitioner.

The petitioner filed for this permament exemption pursuant to 10 CFR 504.60 (Exemption for Use of Natural Gas by Powerplant with Capacity of Less Than 250 Million Btu's per hour, August 12, 1980, 45 FR 53709). Notices of the acceptance of this petition and the availability of a Tentative Staff Analysis were published in the **Federal Register** on March 6, 1981 (46 FR 15538) and June 17, 1981 (46 FR 31701), respectively, presenting an opportunity for public comments and for interested persons to request a hearing relating to the petition and the Tentative Staff Analysis. No comments were received and no hearing was requested.

The existing electric powerplant listed above, Swoope unit #1, is a 7.5 MW electric powerplant that uses natural gas and is prohibited by section 301(a)(1) of FUA from using natural gas as a primary energy source on or after January 1, 1990. Section 301(a) (2) and (3) of FUA prohibits this powerplant from using natural gas as a primary energy source unless such powerplant burned natural gas as a primary energy source in 1977, and then in no proportion greater than the average yearly proportion which the powerplant used in calendar years 1974 through 1976, unless an exemption has been granted by ERA.

Statement of Reasons

Eligibility and evidentiary requirements governing the permanent exemption for use of natural gas by a powerplant with capacity of less than 250 million Btu's per hour are set forth at 10 CFR 504.60. Under 10 CFR 504.60(a), a petitioner may show eligibility for this exemption by making certain certifications. New Smyrna Beach has made the following certifications in its petition:

(1) Unit #1 has a design capability of consuming fuel at a fuel heat input rate of less than 250 million Btu's per hour;

(2) Unit #1 was a baseload powerplant on April 20, 1977;

(3) Unit #1 is not capable of burning solid coal, and no suitable coal derivative is available; and

(4) use of a mixture of an alternate fuel and natural gas or petroleum for which an exemption would be available is not technically or economically feasible in Unit #1.

The ERA staff has examined the foregoing certifications made by New Smyrna Beach and has determined that they fulfill the requirements of 10 CFR 504.60(a). Accordingly, ERA is granting New Smyrna Beach the requested exemption for Swoope #1. This exemption will be subject to the terms and conditions specified in the Decision and Order.

Any questions regarding this permanent exemption should be directed to Mr. Steven E. Ferguson, Acting Deputy Director, Powerplants Conversion Division, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, Room 3002F, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653–4268.

Decision and Order

The Economic Regulatory Administration (ERA) of the Department of Energy hereby issues this Decision and Order granting a permanent exemption from the prohibitions of section 301(a)(1), (2) and (3) of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act). This Decision and Order is issued pursuant to section 312(h) of FUA, 10 CFR 501.68 and 10 CFR 504.60 to the petitioner who owns or operates the powerplant listed below.

Docket No.	Petitioner	Generating station	Powerplant identification
52031-0681-01-42.	City of New Smyrna Beach.	Swoope	#1

Effective Date of Decision and Order

Swoope #1 is currently allowed to burn natural gas until October 31, 1981, under a special temporary public interest exemption which ERA granted to New Smyrna Beach pursuant to 10 CFR Part 508. This Decision and Order shall become effective upon the expiration of the present special temporary public interest exemption on October 31, 1981.

Terms and Conditions

Pursuant to section 314 of FUA, and 10 CFR 504.60(b), the permanent exemption granted under this Decision and Order is conditioned upon, and shall remain in effect, so long as the petitioner, its successors and assigns, complies with the following term and condition:

(1) All steam pipes on Unit #1 must be insulated, and all steam traps on Unit #1 must be properly maintained.

ERA's grant of this permanent exemption does not relieve an existing powerplant from compliance with any rules or regulations concerning the acquisition or the distribution of natural gas that are administered by the Federal Energy Regulatory Commission or any State regulatory agency or from any obligations the utility may have to its customers.

Issued in Washington, D.C. on July 21, 1981.

Robert L. Davies,

Director, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-22327 Filed 7-29-81; 8:45 am]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: July 27, 1981.

JD NO	JA DKT	DET NO	F SEC CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
CALIFORNIA DEPARTMENT OF CONSERVATION							
-CHARLES R TATUM			RECEIVED: 07/06/81 JA: CA				
8139302	81-5-0001	0403120204	103	MARY KAY #2	PYRAMID HILLS	18.0	PACIFIC LIGHTING
COLORADO OIL & GAS COMMISSION							
-NORTHWEST EXPLORATION COMPANY			RECEIVED: 07/02/81 JA: CO				
8139307	CD 0180-81	0510308422	107-TF	PHILADELPHIA CREEK #36	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
-NORTHWEST EXPLORATION COMPANY			RECEIVED: 07/06/81 JA: CO				
8139331	CD 0181-81	0510308363	107-TF	PHILADELPHIA CREEK #37	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
KANSAS CORPORATION COMMISSION							
-ALBERT A THORNBROUGH			RECEIVED: 07/01/81 JA: KS				
8139541	K 81-0445	1507520348	103	MCDONALD #2 13-25S-39W	PANOMA - COUNCIL GROVE	50.0	COLORADO INTERSTA
-AMOCO PRODUCTION CO			RECEIVED: 07/01/81 JA: KS				
8139465	K 81-0361	1512900000	108	WRATIL GAS UNIT A NO 1(2ND FILING)	HUGOTON CHASE	17.0	CITIES SERVICE GA
-ANADARKO PRODUCTION COMPANY			RECEIVED: 07/01/81 JA: KS				
8139527	K 81-0420	1517520514	102-4	HITCH G NO 4	SHUCK	6.0	CIMARRON-QUINQUE
-ARCO OIL AND GAS COMPANY			RECEIVED: 07/01/81 JA: KS				
8139464	K 81-0364	1502500000	108	THEIS GAS UNIT II AC 1	MCKINNEY	18.3	NORTHERN NATURAL
-BENSON MINERAL GROUP			RECEIVED: 07/01/81 JA: KS				
8139505	K 80-0596	1503522015	108	ELAM #1-11	TISDALE	16.4	COLONIAL CORP
8139504	K 80-0597	1503522089	108	ELAM #2-11	TISDALE GAS AREA	16.4	COLONIAL CORP
8139519	K 80-0602	1503522086	108	FULGHUM #1-1	TISDALE	7.3	COLONIAL CORP
8139518	K 80-0601	1503522087	108	FULGHUM #2-1	TISDALE	7.3	COLONIAL CORP
8139503	K 80-0598	1503522021	108	MARILYN JOHNSON #1-1	TISDALE	14.2	COLONIAL CORP
8139517	K 80-600	1503522103	108	MARILYN JOHNSON #2-1	TISDALE	14.2	COLONIAL CORP
8139522	K 81-0283	1504720714	102-3	SCHULTZ I #1-11	WIL EXTENSION	0.0	PANHANDLE EASTERN
8139502	K 80-0599	1503522016	108	SWARTZ #1-2	TISDALE	11.3	COLONIAL CORP
8139534	K 81-0365	1504720714	102-3	WOOD E 1-15	WIL EXTENSION	0.0	PANHANDLE EASTERN
-BEREN CORPORATION			RECEIVED: 07/01/81 JA: KS				
8139533	K 81-0366	1500720654	103	DEAN #1	ROUNDUP SOUTH	27.0	
8139532	K 81-0367	1500720945	103	DEAN #3	ROUNDUP SOUTH	91.0	
-CHAMPLIN PETROLEUM COMPANY			RECEIVED: 07/01/81 JA: KS				
8139478	K 81-0391	1505720181	102-2	MCCUNE NO 1	MINNEOLA	54.0	
-CITIES SERVICE COMPANY			RECEIVED: 07/01/81 JA: KS				
8139497	K-81-0423	1508100000	108	BLAIR C NO 1	VICTORY	1.4	NORTHERN NATURAL
8139531	K 81-0370	1500720903	103	SUTTON C #1	AETNA SE	12.0	
8139516	K 81-0399	1512920438	103	WILBURTON MORROW C SAND UNIT #604	WILBURTON	7.9	COLORADO INTERSTA
-DAVIES & CO INC			RECEIVED: 07/01/81 JA: KS				
8139543	K 81-0443	1505320554	102-2	ALBINA ZALOUDEK #1-17	WILDCAT	45.0	NATURAL GAS PIPEL

JD NO	DT RT	API NO	E SEC CAT	WELL NAME
8139542	K 81-0444	1505320610	102-2	FRANK G HLAUS #1-16
8139544	K 81-0442	1505320619	102-2	MARILYN F SOUKUP #1-14
8139545	K 81-0441	1516721463	102-2	PAUL B BEISEL #1-6
				RECEIVED: 07/01/81 JA: KS
-DAVIS DRLG INC				
8139526	K 81-0411	1512900000	108	HEMPHILL 1-30
8139525	K 81-0410	1512900000	108	KANSAS 2-13
				RECEIVED: 07/01/81 JA: KS
-EXXON CORPORATION				
8139466	K 81-0201	1504720715	103	BERNARD A MEYER #2
				RECEIVED: 07/01/81 JA: KS
-F G HOLL				
8139491	K 81-0467	1504720458	103	CUDNEY C NO 1-34
				RECEIVED: 07/01/81 JA: KS
-FUNK EXPLORATION INC				
8139567	K 80-0627	1502520337	103	ANDERSON #1-30
8139520	K 80-0641	1517520471	103	HIRN RANCH #2
8139471	K 80-1055	1517520475	102-4	HITTLE #1
8139470	K 80-0504	1517510013	102-4	LIGHT C #1
				RECEIVED: 07/01/81 JA: KS
-GEORGE R JONES				
8139480	K 81-0393	1500720631	103	MATHEWS NO 1
				RECEIVED: 07/01/81 JA: KS
-GETTY OIL COMPANY				
8139492	S 81-0466	1511930070	108	CARL EVANS WELL NO 1
				RECEIVED: 07/02/81 JA: KS
-GETTY OIL COMPANY				
8139423	KH1-0472	1511910193	108	E F HARRIS NO 1
				RECEIVED: 07/06/81 JA: KS
-GOULD OIL INC				
8139425	K80-0971	1514520554	108-ER	BOWMAN B #1
				RECEIVED: 07/01/81 JA: KS
-GULF OIL CORPORATION				
8139495	K 81-0462	1500700000	108	LLOYD DAVIS /B/ AC 1
8139489	K 81-0407	1500721027	103	SCHOOL TRUST #12-4
8139529	K 81-0422	1500721111	103	SCHOOL TRUST #15-5
8139475	K 81-0403	1500720956	103	SCHOOL TRUST #2-4
8139474	K 81-0404	1500720957	103	SCHOOL TRUST #3-4
8139473	K 81-0405	1500721039	103	SCHOOL TRUST #5-4
8139528	K 81-0421	1500721109	103	SCHOOL TRUST #6-5
8139490	K 81-0406	1500721025	103	SCHOOL TRUST #9-4
				RECEIVED: 07/01/81 JA: KS
-HUDSON PRIEST INC				
8139487	K 81-0432	1512523439	103	LANGFORD NO 1
8139486	K 81-0433	1512523439	103	LANGFORD NO 2
8139485	K 81-0434	1512523443	103	LANGFORD NO 3
8139484	K 81-0435	1512523444	103	LANGFORD NO 4
8139483	K 81-0436	1512522945	103	LUNDRY NO 1
8139482	K 81-0437	1512523048	103	LUNDRY NO 3
8139481	K 81-0438	1512523440	103	LUNDRY NO 4
8139546	K 81-0439	1512523441	103	LUNDRY NO 5
8139496	K 81-0426	1512522750	103	WHITE NO 1 WELL
8139498	K 81-0427	1512522844	103	WHITE NO 2
8139499	K 81-0428	1512522845	103	WHITE NO 3
8139500	K 81-0429	1512522921	103	WHITE NO 4
8139501	K 81-0430	1512522922	103	WHITE NO 5
8139488	K 81-0431	1512523437	103	WHITE NO 6
				RECEIVED: 07/01/81 JA: KS
-ILUS INDUSTRIES INC				
8139472	K 80-0712	1505320597	102-4	HOKR #1
8139461	KH1-0329	1505320609	102-4	HOKR #2
				RECEIVED: 07/01/81 JA: KS
-J M HUBER CORPORATION				
8139510	K 81-0458	1512920450	103	DUNN NO 7-2
8139511	K 81-0459	1512920451	103	FORTENBAUGH AC 15-1

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FIELD NAME	PROD	PURCHASER
WILDCAT	45.0	NATURAL GAS PIPEL
WILDCAT	45.0	NATURAL GAS PIPEL
EXT DORRANCE	45.0	NATURAL GAS PIPEL
GREENWOOD	3.0	COLORADO INTERSTA
GREENWOOD	5.4	PANHANDLE EASTERN
EMERY EAST	12.0	NORTHERN NATURAL
WIL	8.7	CENTRAL STATES GA
SITKA	0.0	NORTHERN NATURAL
ARKALON	120.0	NORTHERN NATURAL
LIBERAL LIGHT	0.0	PANHANDLE EASTERN
ARKALON (MRW/MISS)	4.3	ANADARKO PRODUCTI
WILDCAT	36.0	PEOPLES NATURAL G
BORCHERS BESSMER	15.3	PANHANDLE EASTERN
SINGLEY	4.8	PANHANDLE EASTERN
BOW	3.6	KANSAS-NEBRASKA N
N RHODES/MISSISSIPPI CHE	11.0	CITIES SERVICE GA
HARDTNER	6.5	CITIES SERVICE GA
HARDTNER	32.0	CITIES SERVICE GA
HARDTNER	25.0	CITIES SERVICE GA
HARDTNER	7.0	CITIES SERVICE GA
HARDTNER	7.0	CITIES SERVICE GA
HARDTNER	9.0	CITIES SERVICE GA
HARDTNER	10.0	CITIES SERVICE GA
JEFFERSON-SYCAMORE	36.5	WELLHEAD ENTERPRI
JEFFERSON-SYCAMORE	547.5	WELLHEAD ENTERPRI
JEFFERSON-SYCAMORE	36.5	WELLHEAD ENTERPRI
JEFFERSON-SYCAMORE	73.0	WELLHEAD ENTERPRI
	3.7	WELLHEAD ENTERPRI
	36.5	WELLHEAD ENTERPRI
JEFFERSON-SYCAMORE	36.5	WELLHEAD ENTERPRI
JEFFERSON-SYCAMORE	36.5	WELLHEAD ENTERPRI
JEFFERSON-SYCAMORE	3.4	WELLHEAD ENTERPRI
JEFFERSON-SYCAMORE	69.0	WELLHEAD ENTERPRI
JEFFERSON-SYCAMORE	3.7	WELLHEAD ENTERPRI
JEFFERSON-SYCAMORE	212.1	WELLHEAD ENTERPRI
JEFFERSON-SYCAMORE	3.7	WELLHEAD ENTERPRI
JEFFERSON-SYCAMORE	43.8	WELLHEAD ENTERPRI
CANNON	90.0	NORTHERN NATURAL
CANNON	0.0	NORTHERN NATURAL
PANOMA COUNCIL GROVE	33.0	CITIES SERVICE GA
PANOMA COUNCIL GROVE	21.0	CITIES SERVICE GA

SEQ NO	JA DKT	API NO	D	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
-K & O OIL CORP									
						RECEIVED: 07/01/81 JA: KS			
8139455	K81-0385	1500720952		103		NORMA NO 1	STRANATHAN	20.0	PANHANDLE EASTERN
-LEE BANKS									
						RECEIVED: 07/01/81 JA: KS			
8139462	K81-0414	1511520447		102-4		LOEWEN #C-1	NORTH BORCHERS	182.0	PANHANDLE EASTERN
-MARTIN OIL PRODUCERS INC									
						RECEIVED: 07/01/81 JA: KS			
8139513	K 81-0396	1509521038		103		#1 DALLKE - CALKIN	KLAVER NE	72.0	PEOPLES NATURAL G
-MESA PETROLEUM									
						RECEIVED: 07/01/81 JA: KS			
8139509	K 81-0454	1511520361		108		BENDER #1-22	SINGLEY	4.0	PANHANDLE EASTERN
8139540	K 81-0452	1511920286		108		PINNICK #1-24	CIMARRON BEND	2.0	KANSAS POWER & LI
8139508	K 81-0453	1511920086		108		ROSSON #1-32	MCKINNEY	4.0	KANSAS POWER & LI
-MID-CONTINENT ENERGY CORP									
						RECEIVED: 06/29/81 JA: KS			
8139412	K-81-0061	1503320305		103		HOYT #1	HARDING WEST	118.6	CENTRAL STATES GA
-MOBIL OIL CORP									
						RECEIVED: 07/01/81 JA: KS			
8139538	K 81-0373	1509320717		103		C A LOUCKS UNIT B NC 2	PANOMA COUNCIL GROVE GAS	70.0	CITIES SERVICE GA
8139512	K 81-0395	1518910054		108		PEACHEY #1 UNIT #2	VOORHEES	15.0	NORTHERN NATURAL
8139536	K 81-0376	1509320723		103		TATE-HOLDRIDGE UNIT NO 2	PANOMA COUNCIL GROVE	70.0	CITIES SERVICE GA
8139535	K 81-0377	1509320718		103		WARD-TATE UNIT NO 2	PANOMA COUNCIL GROVE	70.0	CITIES SERVICE GA
-MOLZ OIL CO									
						RECEIVED: 07/01/81 JA: KS			
8139454	K 81-0386	1500720732		102-2		ALDER NO 1	WC-UNNAMED-DISCOVERY	1168.0	PANHANDLE EASTERN
-MOLZ OIL CO									
						RECEIVED: 07/02/81 JA: KS			
8139424	K81-0471	1507720600		103		ALBRIGHT NO 1		146.0	PEOPLES NATURAL G
-NIELSON ENTERPRISES INC									
						RECEIVED: 07/01/81 JA: KS			
8139548	K 81-0322	1502320070		103		HENDRICKS NO 1	SO ST FRANCIS GAS AREA	10.0	PEOPLES NATURAL G
-NORTHERN NATURAL GAS PRODUCING CO									
						RECEIVED: 07/01/81 JA: KS			
8139524	K 81-0409	1518920530		103		BOLES NO 2 UNIT NC 3	HUGOTON	40.0	NORTHERN NATURAL
8139539	K 81-0372	1505520438		103		BROWN NO 15 FARM NO 16	PANOMA COUNCIL GROVE	70.0	NORTHERN NATURAL
8139537	K 81-0375	1505520437		103		BROWN NO 19 UNIT NC 20	PANOMA COUNCIL GROVE GAS	70.0	NORTHERN NATURAL
-OLYMPIC PETROLEUM COMPANY									
						RECEIVED: 07/01/81 JA: KS			
8139514	K 81-0397	1503521122		108		NO 2 J G MANSER	EAST MANSUR GAS FIELD	78.0	CITIES SERVICE GA
-PAR PETROLEUM INC									
						RECEIVED: 07/01/81 JA: KS			
8139463	K 81-0446	1511920403		102-4		RAMSEY #1	ANGELL FIELD	182.5	PANHANDLE EASTERN
-PETRO-LEWIS CORPORATION									
						RECEIVED: 07/01/81 JA: KS			
8139460	K81-0379	1517520503		103		FEDERAL LAND BANK NC 1	ADOBE	164.0	
-R J PATRICK OPERATING CO									
						RECEIVED: 07/01/81 JA: KS			
8139493	K 81-0465	1503320421		103		ROBERT WIMMER #1 - AMAZONIAN		91.3	NORTHERN NATURAL
8139494	K 81-0464	1503320421		102-4		ROBERT WIMMER #1 - MISSISSIPPIAN		73.0	NORTHERN NATURAL
-RUPE OIL CO INC									
						RECEIVED: 07/01/81 JA: KS			
8139515	K 81-0398	1505320661		103		#1 CLYDE WESTERMAN	ELLSWORTH SE	0.0	CITIES SERVICE GA
8139476	K 81-0387	1505320413		108		#1 PROCHASKA	ELLSWORTH S E	20.0	CITIES SERVICE GA
8139477	K81-0388	1505320407		108		#1 WESTERMAN	ELLSWORTH S E	18.5	CITIES SERVICE GA
-S K TUTHILL & B J BARBEE									
						RECEIVED: 07/01/81 JA: KS			
8139459	K81-0381	1503320397		102-2		PIERCE NO 1-27		75.0	MICHIGAN-WISCONSI
-SOUTH RANCH OIL CO INC									
						RECEIVED: 07/01/81 JA: KS			
8139458	K 81-0382	1509521046		102-2		GRABER NO 1-A		1278.0	
8139457	K 81-0383	1509521047		102-2		SEIFERT NO 1		1049.0	
8139456	K 81-0384	1509521006		102-2		YOUNG NO 1		1898.0	
-SOUTHLAND ROYALTY CO									
						RECEIVED: 07/01/81 JA: KS			
8139479	K 81-0392	1518920492		103		LITTELL #1-1	EXTENSION/WIDE AWAKE	295.0	NORTHERN NATURAL
-TEGO INC									
						RECEIVED: 07/01/81 JA: KS			
8139467	K 81-0126	1512522104		103		BARNETT #11		28.0	SENOCO INC
8139547	K 81-0118	1520520541		103		K NELSON #2	VILAS	14.0	SENOCO INC
8139469	K 81-0122	1512522130		103		KURTIS/LAYTON #1		43.8	SENOCO INC
8139468	K 81-0123	1512522218		103		KURTIS/LAYTON #2		73.0	SENOCO INC

JD NO	JD ET	API NO	E SEC CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
-W B OSBORN JR (OPERATOR)			RECEIVED: 07/01/81 JA: KS				
8139530	K 81-0371	1509320635	102-2	DAVID #4-A	PANOMA (COUNCIL GROVE)	30.0	COLORADO INTERSTA
8139523	K 81-0408	1503522610	103	SPANGLER #1	BURDEN TOWNSITE	10.0	CITIES SERVICE GA
-WALTER KUHN DRILLING COMPANY			RECEIVED: 07/01/81 JA: KS				
8139506	K 79-1736	1505520369	103	DEVLIN NO 2	PANOMA	73.0	COLORADO INTERSTA
-WAYMAN W BUCHANAN			RECEIVED: 07/01/81 JA: KS				
8139521	K 81-0115	1507120177	103	HOFFMAN NO 1	NORTH BRADSHAW	182.5	SUNFLOWER ELECTRI
8139550	K 81-0306	1507120205	103	ROSS NO 3	WILDCAT	109.5	SUNFLOWER ELECTRI
8139549	K 81-0307	1507120206	103	ROSS NO 4	WILDCAT	109.5	SUNFLOWER ELECTRI
********** NEW MEXICO DEPARTMENT OF ENERGY & MINERALS **********							
-DIETRICH EXPLORATION COMPANY INC			RECEIVED: 06/29/81 JA: NM				
8139300		3004522575	108	STATE #1	NIPP PICTURED CLIFF	18.0	EL PASO NATURAL G
-POGO PRODUCING COMPANY			RECEIVED: 06/29/81 JA: NM				
8139301		3002526808	102-4	POGO BKO COM #1	OJO CHISO (MORROW)	300.0	LLANO INC
-READ & STEVENS INC			RECEIVED: 06/29/81 JA: NM				
8139297		3001523609	103	GULF WEST MESA NO 2	UNDES BUNKER HILL (PENNC	10.0	PHILLIPS PETROLEU
-SOUTHLAND ROYALTY CO			RECEIVED: 06/29/81 JA: NM				
8139299		3004524933	103	GERARD A #1E	BASIN	97.0	EL PASO NATURAL G
-SUN OIL COMPANY (DELAWARE)			RECEIVED: 06/29/81 JA: NM				
8139298		3002526069	103	J A AKENS WELL #10	OIL CENTER - BLINEBRY	21.0	PHILLIPS PETROLEU
********** OHIO DEPARTMENT OF NATURAL RESOURCES **********							
-APPALACHIAN PETROLEUM CORP			RECEIVED: 06/29/81 JA: OH				
8139426		3416725066	108	J LOAR #1		3.5	COLUMBIA GAS TRAN
-BUCKEYE OIL PRODUCING CO			RECEIVED: 06/29/81 JA: OH				
8139433		3411122089	107-DV	CLARENCE CHRISTMAN #1	MALAGA	24.0	COLUMBIA GAS TRAN
8139430		3411121960	107-DV	CLYDE LANDEFELD #1	MALAGA	2.0	COLUMBIA GAS TRAN
8139429		3411122057	107-DV	LAWRENCE RICER #1	MALAGA	2.0	COLUMBIA GAS TRAN
8139432		3411122062	107-DV	OTTO BURKHART JR (78) #1	MALAGA	12.0	COLUMBIA GAS TRAN
8139427		3411121959	107-DV	OTTO BURKHART JR (82) #1	MALAGA	8.0	COLUMBIA GAS TRAN
8139431		3411122061	107-DV	OTTO BURKHART SR #1	MALAGA	3.0	COLUMBIA GAS TRAN
8139428		3411121995	107-DV	PAUL CRUM #1	MALAGA	4.0	COLUMBIA GAS TRAN
-C W RIGGS INC			RECEIVED: 06/29/81 JA: OH				
8139445		3416725538	107-DV	HARRY STEINHOFF #1	RENO	3.7	COLUMBIA GAS TRAN
8139444		3416725309	107-DV	HERBERT GEARHART #1	RENO	6.8	COLUMBIA GAS TRAN
8139446		3416725917	107-DV	LLOYD IMMELL HEIRS #1	RENO	4.2	COLUMBIA GAS TRAN
8139443		3411122222	107-DV	MARY ROACH #1	WOODSFIELD	7.1	COLUMBIA GAS TRAN
8139447		3416726141	107-DV	USA TICE-LYONS #1	RENO	2.7	COLUMBIA GAS TRAN
8139448		3416726253	107-DV	WILLIAM WOLFERT UNIT #2A	RENO	6.8	COLUMBIA GAS TRAN
-CLINE OIL & GAS CO			RECEIVED: 06/29/81 JA: OH				
8139435		3416723966	107-DV	HUGHEY #1	AURELIUS	24.0	COLUMBIA GAS TRAN
8139436		3416723991	107-DV	ROFF #1	AURELIUS	2.0	COLUMBIA GAS TRAN
8139434		3416723905	107-DV	SNODGRASS #1	AURELIUS	.7.0	COLUMBIA GAS TRAN
-COLLINS-MCGREGOR OPERATING COMPANY			RECEIVED: 06/29/81 JA: OH				
8139437		3416726339	107-DV	BARBER RIGGS #1	INDEPENDENCE	7.0	COLUMBIA GAS TRAN
-ENSERCH EXPLORATION INC			RECEIVED: 06/29/81 JA: OH				
8139439		3400720658	108	FLICKINGER UNIT 1 NO 2	LENOX	3.0	JONES & LAUGHLIN
8139438		3400720594	108	FLICKINGER UNIT-1 NO 1	LENOX	3.0	JONES & LAUGHLIN
-J D DRILLING CO			RECEIVED: 06/29/81 JA: OH				
8139440		3410521910	107-DV	CHARLES W CORBELL #1	SUTTON	5.0	COLUMBIA GAS TRAN

JC FM	JC AT	API NO	C SEC CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
-L & M OPERATING INC			RECEIVED: 06/29/81 JA: CK				
8139441		3416724946	107-DV	FRANK BALL #4	NEWPORT	12.8	COLUMBIA GAS TRAN
-L & M PETROLEUM INC			RECEIVED: 06/29/81 JA: CK				
8139442		3416724827	108	ALBERT RAUCH #1		12.8	GAS TRANSPORT INC
-RELIANCE ENERGY			RECEIVED: 06/29/81 JA: CK				
8139453		3408924131	107-DV	CARL HOSKINSON #1	NEWTON	4.0	COLUMBIA GAS TRAN
-WHITNAM OIL & GAS CORP			RECEIVED: 06/29/81 JA: CK				
8139450		3416725880	107-DV	CHARLES WEST #1	DECATUR	15.0	COLUMBIA GAS TRAN
8139452		3416726283	107-DV	ELLYSON #1	DECATUR	15.0	COLUMBIA GAS TRAN
8139451		3416725963	107-DV	HAUGHT DECKER HEIRS #3	INDEPENDENCE	15.0	COLUMBIA GAS TRAN
8139449		3416725879	107-DV	LEO SCHRADER #2	DECATUR	15.0	COLUMBIA GAS TRAN
OKLAHOMA CORPORATION COMMISSION							
-AL MCCORD INC			RECEIVED: 06/26/81 JA: CK				
8139382	07709	3509321690	103	D KOEHN 1-25	NGPA CLASSIFICATION CORP	16.0	PIONEER GAS PRODU
-ALAN L LAMB			RECEIVED: 07/02/81 JA: CK				
8139584	09496	3572163600	103	#1 CIMARRON 007-64495		180.0	MICHIGAN WISCONSI
-AMOCO PRODUCTION CO			RECEIVED: 07/02/81 JA: CK				
8139635	09406	3509320345	108	CASE UNIT F WELL #1	CEDARDALE NE	20.0	MICHIGAN WISCONSI
8139578	09564	3504520665	108	JAMES STENDER A WELL #1	CATESBY NE	10.0	MICHIGAN WISCONSI
8139616	09559	3503920359	103	MARJORIE BURTON UNIT NO 1	N WEATHERFORD	70.0	
-AN-SON CORPORATION			RECEIVED: 07/02/81 JA: CK				
8139561	09558	3501121517	103	RITA NO 1	EAST CHEENE	161.0	PHILLIPS GAS CO
8139562	09557	3508720524	103	SANSOME #1	W WASHINGTON	6.0	SUN GAS CO
-ANDOVER OIL COMPANY			RECEIVED: 06/26/81 JA: CK				
8139397	09815	3505121016	102-2	BALLARD #17-1		146.0	ARKANSAS LOUISIAN
8139397	09815	3505121016	103	BALLARD #17-1		146.0	ARKANSAS LOUISIAN
8139393	09783	3501721757	102-2	COOKSEY #10-4		55.0	DELHI GAS PIPELIN
8139393	09783	3501721757	103	COOKSEY #10-4		55.0	DELHI GAS PIPELIN
8139408	09472	3507322566	103	POPE #18-1		110.0	CITIES SERVICE GA
8139392	09814	3501721789	102-2	SCHWAB #15-3		146.0	DELHI GAS PIPELIN
8139392	09814	3501721789	103	SCHWAB #15-3		146.0	DELHI GAS PIPELIN
8139376	09600	3501721380	102-2	WEGENER FOUNDATION #19-1		100.0	DELHI GAS PIPELIN
8139376	09600	3501721380	103	WEGENER FOUNDATION #19-1		100.0	DELHI GAS PIPELIN
-ANDOVER OIL COMPANY			RECEIVED: 07/02/81 JA: CK				
8139554	09643	3501721700	102-2	CLOUSE #5-3		185.0	DELHI GAS PIPELIN
8139554	09643	3501721700	103	CLOUSE #5-3		185.0	DELHI GAS PIPELIN
8139614	09747	3507322565	102-2	KRITTENBRINK #35-1		180.0	DELHI GAS PIPELIN
8139614	09747	3507322565	103	KRITTENBRINK #35-1		180.0	DELHI GAS PIPELIN
8139607	09746	3501721617	102-2	MILAM #18-1		90.0	DELHI GAS PIPELIN
8139607	09746	3501721617	103	MILAM #18-1		90.0	DELHI GAS PIPELIN
8139552	09672	3501721738	102-2	SCHWAB #15-2		146.0	DELHI GAS PIPELIN
8139552	09672	3501721738	103	SCHWAB #15-2		146.0	DELHI GAS PIPELIN
-ARCO OIL AND GAS COMPANY			RECEIVED: 06/26/81 JA: CK				
8139377	09585	3504722196	102-4	ELSIE WHITE WELL #2	SOUTH DOUGLAS	73.0	
-ARCO OIL AND GAS COMPANY			RECEIVED: 07/02/81 JA: CK				
*8139600	09464	3506120339	103	RABON HEIRS UNIT NO 2	KINTA	173.0	OKLAHOMA GAS & EL
-B & H EXPLORATION CO			RECEIVED: 07/02/81 JA: CK				
8139567	09543	3510521824	103	MATHES #2A		22.0	A G SYSTEMS INC
-BEARD OIL COMPANY			RECEIVED: 07/02/81 JA: CK				
8139577	09572	3511921323	103	#1 SCHNEIDER A	SOUTHEAST PARADISE	35.0	CITIES SERVICE GA
8139629	09506	3511921224	103	SCHNEIDER #1	SOUTHEAST PARADISE	70.0	CITIES SERVICE GA

JD NO	OP CD	API NO	E SEC TWP RGE	WELL NAME	FIELD NAME	PROD	PURCHASER
-BELLWETHER EXPLORATION CO				RECEIVED: 07/02/81 JA: CK			
8139586	09252	3508720449	103	VIERSON 1-9	PAYNE	0.0	SUN GAS CO
				RECEIVED: 06/26/81 JA: OK			
-BLUE QUAIL ENERGY INC			103	SMITH #1	YUKON- C OF NW/4 SW/4 NE	450.0	PHILLIPS PETROLEU
8139391	09547	3501721245		RECEIVED: 07/02/81 JA: CK			
-BOBBY ROWE OIL PROPERTIES			108	E E LEE #2	POLLYANNA	4.2	PHILLIPS PETROLEU
8139593	08605	3510900000		RECEIVED: 07/02/81 JA: CK			
-CARL T HUBBELL OIL & GAS INV CO			103	CARL T HUBBELL NC 1 MURRELL ETAL	MORRIS	20.0	PHILLIPS PETROLEU
8139598	09493	3511122379		RECEIVED: 06/26/81 JA: CK			
-CHAMPLIN PETROLEUM COMPANY			103	H A TOEWS NO 2	ENID	27.7	CHAMPLIN PETROLEU
8139374	09331	3504721835		RECEIVED: 07/02/81 JA: CK			
-CHAMPLIN PETROLEUM COMPANY			108	E H ROEVER NO 1	ENID	19.0	CHAMPLIN PETROLEU
8139589	09067	3504700000	108	MOBERLY UNIT #1	LAVERNE	19.0	MICHIGAN WISCONSI
8139590	09069	3505900000	108	W GLIDEWELL NO 1	E CHANEY DELL	19.0	CHAMPLIN PETROLEU
8139591	09078	3509300000		RECEIVED: 07/02/81 JA: CK			
-CHRISTIE-STEWART DRILLING CO			103	BRANHAM NO 1	ELMORE CITY EAST	0.0	LONE STAR GAS CO
8139626	09510	3504921364		RECEIVED: 07/02/81 JA: CK			
-CITIES SERVICE COMPANY			102-2	A-CROSS RANCH-B #1	W CARPENTER	100.0	EL PASO NATURAL G
8139557	09617	3512920510	103	PATTON A #1	WEST KIOWA	292.0	
8139572	09552	3512100000		RECEIVED: 06/26/81 JA: CK			
-CLARK RESOURCES INC			102-4	BINGO 1-1 (LOWER SKINNER)	SOONER TREND	297.5	CITIES SERVICE GA
8139370	09218	3507322264		RECEIVED: 07/02/81 JA: CK			
-CLARK RESOURCES INC			102-4	BINGO 1-1 (MISSISSIPPI)	SOONER TREND	297.5	CITIES SERVICE GA
8139585	09219	3507322264	103	HLADIK 21-1 (CLEVELAND)	SOONER TREND	200.0	EASON OIL CO
8139621	09532	3507322736	103	HLADIK 21-1 (MISSISSIPPI)	SOONER TREND	200.0	EASON OIL CO
8139579	09533	3507322736	102-4	MARCUS 6-1 (SKINNER)	SOONER TREND	297.5	CITIES SERVICE GA
8139560	09275	3507322217		RECEIVED: 06/26/81 JA: CK			
-CLAYTON W WILLIAMS JR			102-4	R COX #1	EAKLEY (RED FORK)	700.0	MICHIGAN WISC P L
*8139394	09253	3501520916	103	R COX #1	EAKLEY (RED FORK)	700.0	MICHIGAN WISC P L
*8139394	09253	3501520916		RECEIVED: 07/02/81 JA: CK			
-COTTON PETROLEUM CORPORATION			103	STRICKLIN NO 2	HOOKER	350.0	WESTERN GAS INTER
8139603	09586	3513921364		RECEIVED: 07/02/81 JA: OK			
-COURSON OIL & GAS INC			108	GRUNAU #1-28	BALKO SOUTH	15.0	INTERNORTH INC
8139636	09456	3500700000		RECEIVED: 07/02/81 JA: CK			
-DEMCO OIL & GAS COMPANY			103	KAHLE #3-1		37.4	CITIES SERVICE GA
*8139624	09519	3507122316	103	KAHLE #35-1		228.9	CITIES SERVICE GA
*8139623	09520	3507122105		RECEIVED: 06/26/81 JA: CK			
-DEVON CORPORATION			102-4	MITCHELL #1-8	W MCALESTER	200.0	DELHI GAS PIPELIN
8139389	09578	3512120735	103	MITCHELL #1-8	W MCALESTER	200.0	DELHI GAS PIPELIN
8139389	09578	3512120735		RECEIVED: 07/02/81 JA: CK			
-DON MORGAN			102-2	PROUD MARY #1		10.0	DIAMOND-S GAS SYS
8139615	09658	3513121169		RECEIVED: 07/02/81 JA: CK			
-DYCO PETROLEUM CORPORATION			103	HANNI #1-1		110.0	EL PASO NATURAL G
8139580	09587	3512920478	103	THURMOND #1-36		700.0	EL PASO NATURAL G
8139575	09585	3512920212		RECEIVED: 07/02/81 JA: CK			
-EDWIN L COX			103	SLEEPER NO 1-A	CARTHAGE TOPEKA	162.0	PANHANDLE EASTERN
8139570	09574	3513921352		RECEIVED: 06/26/81 JA: CK			
-ELDER & VAUGHN			103	MALONE #1	UNALLOCATED	91.0	NORTHERN NATURAL
8139385	09452	3505920926		RECEIVED: 07/02/81 JA: OK			
-F C O LTD			103	COKER 1-26	N W CARNEY	116.8	SUN GAS CO
8139604	09517	3508120989		RECEIVED: 06/26/81 JA: CK			
-GEORGE RODMAN INC			103	BILLY TED NO 1	W CAMPBELL	365.0	NORTHERN NATURAL
8139403	09459	3509321760		RECEIVED: 07/02/81 JA: CK			
-GEORGE RODMAN INC							

JD NO	DA CKT	API NO	C	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8139599	09460	3504521372		103		MILLER NO 1	BRADLEY POOL	912.5	TRANSOK PIPELINE
-GULF OIL CORPORATION				RECEIVED: 07/02/81 JA: CK					
8139633	09480	3507322524		103		MARY PINKERTON-STATE #1-24	S E ALTONA	139.0	
8139634	09482	3501121487		102-2		OPPEL MILDRED 1-25	OMEGA SOUTH	275.0	
8139632	09479	3507720201		102-2		W C BOOTH-STATE NO 1-1	PANOLA	283.0	
-HAMILTON BROTHERS OIL CO				RECEIVED: 06/26/81 JA: CK					
8139375	09606	3504520880		102-2		STATE NO 1-16	WILDCAT	700.0	UNITED GAS PIPE L
-HARPER OIL COMPANY				RECEIVED: 06/26/81 JA: CK					
8139373	09330	3507300000		108		HACKNEY #1	SOONER TREND	35.0	PHILLIPS PETROLEU
8139390	09513	3512920462		102-2		JOE SMITH #1	WILDCAT	170.0	DELHI GAS PIPELIN
-HARPER OIL COMPANY				RECEIVED: 07/02/81 JA: CK					
8139617	09596	3507322894		103		BUGG #2	SOONER TREND	36.0	PHILLIPS PETROLEU
8139602	09451	3504321123		102-4		HAIRY WOMAN #1	WEST FONDA	220.0	DELHI GAS PIPELIN
*8139551	09698	3503520350		102-2		VERA #1	W ARAPAHO	350.0	NATURAL GAS PIPEL
-HUNTON OIL & GAS CORP				RECEIVED: 06/26/81 JA: CK					
8139409	09469	3508300000		103		BRYAN #1	S CRESCENT	0.0	CONOCO INC
-J W JEAN JR				RECEIVED: 07/02/81 JA: OK					
8139622	09523	3506720380		103		ROBBERSON NO 3	NORTHWEST HEALTON	127.0	AMINOIL USA INC
-JAMES C MEADE				RECEIVED: 06/26/81 JA: CK					
8139396	09546	3507920367		103		EBERLY AND MEADE REED TRUST #1-36	RED OAK	548.0	
-JONES & PELLOW OIL CO				RECEIVED: 06/26/81 JA: CK					
8139364	09349	3504700000		108		LORAN #1	E ENID	10.0	CHAMPLIN PETROLEU
8139365	09350	3504700000		108		MISSION #1	E ENID	9.0	CHAMPLIN PETROLEU
-JONES & PELLOW OIL CO				RECEIVED: 07/02/81 JA: CK					
8139576	09588	3501922171		103		PECK 2-1	TATUM	240.0	AMINOIL USA
-KLINE & PITTENGER EXPLORATION				RECEIVED: 06/26/81 JA: OK					
8139410	09466	3509321998		103		KELLN NO 1	RINGWOOD	170.0	AMINOIL USA INC
-L & T OIL & GAS INC				RECEIVED: 07/02/81 JA: CK					
8139619	09614	3507322677		103		MCALLISTER NO 1	SOONER TREND	102.7	CITIES SERVICE CO
-L G WILLIAMS OIL COMPANY INC				RECEIVED: 06/26/81 JA: CK					
8139383	05642	3501721473		103		JACOBS 18-1	N RICHLAND	0.0	PHILLIPS PETROLEU
8139395	09548	3504321100		103		KELLER #26-1	NW ADOBSCOT	0.0	DELHI GAS PIPELIN
-LADD PETROLEUM CORPORATION				RECEIVED: 06/26/81 JA: CK					
8139372	09241	3504700000		108		WEINKAUF NO 1	ELK HORN	15.0	AMINOIL USA INC
-LADD PETROLEUM CORPORATION				RECEIVED: 07/02/81 JA: CK					
8139564	09486	3509321890		103		BECKNER NO 2	RINGWOOD	13.7	RINGWOOD GATHERIN
8139583	09485	3509321867		103		COPPOCK NO 3	RINGWOOD	0.0	PIONEER GAS PRODU
8139597	09484	3509321867		103		COPPOCK NO 3 (MANNING)	RINGWOOD	13.6	RINGWOOD GATHERIN
-LARIO OIL & GAS COMPANY				RECEIVED: 07/02/81 JA: CK					
8139566	09575	3504921375		103		GRAHAM #3	WEST WHITEBEAD	56.6	WARREN PETROLEUM
-M M RESOURCES INC				RECEIVED: 07/02/81 JA: CK					
8139565	09571	3504722288		103		ADRIAN MEYER #1		0.0	GRACE PETROLEUP C
-MAGIC CIRCLE ENERGY CORP				RECEIVED: 06/26/81 JA: CK					
8139363	09332	3500320771		103		BIXLER #1	WEST CARMEN FIELD	180.0	OKLAHOMA NATURAL
-MAGIC CIRCLE ENERGY CORP				RECEIVED: 07/02/81 JA: CK					
8139596	09477	3515121095		103		SHIRE #1	W CLEO SPRINGS	180.0	OKLAHOMA NATURAL
-MAJOR OIL CORP				RECEIVED: 06/26/81 JA: CK					
*8139379	08808	3509321880		103		SKEWES NO 1-15	MEAD-RINGWOOD	75.0	OKLAHOMA NATURAL
-MALKA PRODUCTION CO				RECEIVED: 06/26/81 JA: CK					
8139387	09569	3515121047		102-2		#1-4 LENHART	WILDCAT	200.0	PRODUCERS GAS CO
-MARK GANER OIL & GAS				RECEIVED: 07/02/81 JA: CK					
8139592	08558	3507121567		108		ORR #1	NORTH PILWORTH FIELD	11.0	EUFUALA ENTERPRIS
8139630	08557	3507122033		108		ORR #4	NORTH PILWORTH FIELD	11.0	EUTUALA ENTERPRIS

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JD NO	DT AT	API NO	D SEC CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
-MAY PETROLEUM INC							
8139371	09027	3515320509		RECEIVED: 06/26/81 JA: CK			
			108	H M RILEY #1 (153-48141-1)	WOODWARD NORTH	13.0	NORTHERN NATURAL
				RECEIVED: 07/02/81 JA: CK			
-MAY PETROLEUM INC							
8139558	09611	3500920347	102-3	KYSAR #1 (OTC UNASSIGNED)		365.0	ARKANSAS LOUISIAN
				RECEIVED: 07/02/81 JA: CK			
-NATIONAL OIL COMPANY							
8139563	09495	3507322522	103	MUEGGENBORG # 073-62785	S REEDING	584.0	CONOCO INC
				RECEIVED: 07/02/81 JA: CK			
-NELSON PETROLEUM COMPANY							
8139571	09583	3512120770	103	STARR #2-15 OTC #121-65-304	RUSSELLVILLE	365.0	SOUTHEAST TRANSMI
				RECEIVED: 07/02/81 JA: OK			
-OUACHITA EXPLORATION INC							
8139569	09500	3505100000	103	NORTHWOODS #1	CHICKASHA GAS FIELD	60.0	ARKANSAS-LOUISIAN
				RECEIVED: 07/02/81 JA: OK			
-PCX CORP							
8139553	09593	3509521471	103	BOERS #2	CHEYENNE VALLEY	25.0	PHILLIPS PETROLEU
				RECEIVED: 06/26/81 JA: CK			
-PHILLIPS PETROLEUM COMPANY							
8139381	08639	3501721552	103	PETTIGREW B #1		0.0	ONG WESTERN INC
				RECEIVED: 07/02/81 JA: CK			
-PHILLIPS PETROLEUM COMPANY							
8139625	09514	3501720806	108	MATTHIES A #1		0.0	TRANSOK PIPELINE
				RECEIVED: 07/02/81 JA: CK			
-POTTS-STEPHENSON EXPLORATION CO							
8139601	09476	3512120767	103	STANFIELD #2-33	FEATHERSTON	0.0	SOUTHEAST TRANSMI
				RECEIVED: 07/02/81 JA: CK			
-READING & BATES PETROLEUM CO							
8139609	09728	3512920502	102-2	CALVERT #1-26	S W HAMMON	73.0	
				RECEIVED: 07/02/81 JA: OK			
-REBEL OIL CO							
8139627	09509	3511920845	103	KIRBY-JONES #2	PRAIRIE VIEW	7.0	CITIES SERVICE GA
8139628	09508	3511921058	103	WETZEL #1	PRAIRIE VIEW	10.0	CITIES SERVICE GA
-REPUBLIC GAS GATHERING SYSTEMS INC				RECEIVED: 06/26/81 JA: OK			
8139380	07735	3500721738	103	STATE OF OKLAHOMA A #1	S W BALKO	0.0	TRANSWESTERN PIPE
				RECEIVED: 06/26/81 JA: OK			
-RICKS EXPLORATION CO							
8139366	12248	3501521025	107-DP	SANDERS #1-3	N CEMENT	351.0	SOUTHERN NATURAL
				RECEIVED: 07/02/81 JA: OK			
-RICKS EXPLORATION CO							
8139612	10012	3507322630	102-3	ALMA 29A	S ALTONE	540.0	PHILLIPS PETROLEU
				RECEIVED: 07/02/81 JA: OK			
-S K TUTHILL & B J BARBEE							
8139610	09713	3515321148	102-2	SIMPSON WALKER NC 1-26	SOUTH FREEDOM	55.0	PANHANDLE EASTERN
				RECEIVED: 07/02/81 JA: OK			
-SABINE PRODUCTION COMPANY							
8139573	09551	3501720974	103	NOVAK A #1	NORTH YUKON	0.0	
8139574	09550	3501720974	103	NOVAK A #1	NORTH YUKON	0.0	
				RECEIVED: 07/02/81 JA: OK			
-SAMEDAN OIL CORPORATION							
8139620	09677	3501720878	102-2	J & J FARMS NC 1		250.0	PHILLIPS PETROLEU
				RECEIVED: 07/02/81 JA: OK			
-SENECA OIL CO							
8139556	09626	3509321983	102-2	WILLIS-WILCOX NO 1-26	S ORIENTA	140.0	PANHANDLE EASTERN
8139556	09626	3509321983	103	WILLIS-WILCOX NO 1-26	S ORIENTA	140.0	PANHANDLE EASTERN
				RECEIVED: 06/26/81 JA: CK			
-SHELL OIL CO							
8139404	09422	3500700000	108	ATKINS B #1-26	MCCANE LAVERNE	20.1	EL PASO NATURAL G
8139400	09417	3500700000	108	CUSTER STATE #1-16	MCCANE LAVERNE	6.8	PHILLIPS PETROLEU
8139399	09413	3501900000	108	MC LAIN #3	FOX GRAHAM	1.7	MOBIL OIL CORP
8139402	09414	3501900000	108	MC LAIN #4	FOX GRAHAM	1.7	MOBIL OIL CORP
8139406	09420	3504500000	108	OHERN #1-32	CATESBY	16.5	TRANSWESTERN PIPE
8139401	09415	3501900000	108	PRUITT #3A	SHOLEM ALECHEM	4.7	LONE STAR GAS CO
8139407	09418	3507300000	108	SIMUNEK #2-31	HENNESSEY EAST	5.7	EXXON CORP
8139405	09421	3507500000	108	VAVERKA B #2-06	HENNESSEY EAST	6.5	EXXON CORP
				RECEIVED: 07/02/81 JA: OK			
-SHELL OIL CO							
8139582	09478	3505120976	102-2	MCCALLA RANCH NO 1-12	TABLER NORTHEAST	1343.2	ARKANSAS LOUISIAN
				RECEIVED: 07/02/81 JA: CK			
-SOUTHLAND ROYALTY CO							
8139555	09602	3513921242	103	HEIRS #1-33	CAPLE	76.0	NORTHERN NATURAL
-SUN OIL COMPANY (DELAWARE)				RECEIVED: 07/02/81 JA: CK			

8139595	08667	3500700000	108		BOYD UNIT NO 8-1	E GRAND VALLEY	4.0	PHILLIPS PETROLEU
8139594	08664	3500700000	108		BOYD UNIT NO 5-2	E GRAND VALLEY	0.1	PHILLIPS PETROLEU
-TENNECO OIL COMPANY			RECEIVED: 07/02/81 JA: CK					
8139587	09280	3509321267	103		CLASSEN #1	BADC EAST	165.0	DELHI GAS PIPELIN
8139555	09641	3504321030	102-3		MCNEILL 1-10	NOBSCOT NW	46.0	DELHI GAS PIPELIN
-TEXAS OIL & GAS CORP			RECEIVED: 07/02/81 JA: CK					
8139605	09515	3512120747	103		CRABTREE C #1	SC BREWER	108.4	DELHI GAS PIPELIN
8139606	09516	3509320887	108		WESTFAHL #1	RINGWOOD	13.0	UNION TEXAS PETRO
-TOWNER PETROLEUM CO			RECEIVED: 06/26/81 JA: CK					
8139368	09346	3508121075	103		STRATTON #3-1	MERRICK	17.5	SERVICE DRILLING
-TRANS-WESTERN EXPLORATION INC			RECEIVED: 06/26/81 JA: CK					
8139386	09457	3504321103	103		MARSHALL NO 2	N OAKWOOD	5.0	PHILLIPS PETROLEU
-TRANSIERRA EXPLORATION CORP			RECEIVED: 06/26/81 JA: CK					
8139384	09453	350472225P	103		CARL FORD NO 4	GARBER FIELD	20.0	ARCO OIL & GAS CO
-TRIGG DRILLING COMPANY INC			RECEIVED: 07/02/81 JA: CK					
8139588	09612	350152096R	103		RUSS BARGER #1	S CCGAR	0.0	PUBLIC SERVICE CO
-UNIVERSAL RESOURCES CORPORATION			RECEIVED: 06/26/81 JA: CK					
8139378	08849	3501721611	103		GRELLNER 1-1	N W RICHLAND	237.3	PHILLIPS PETROLEU
-VAN HORN OIL & GAS INC			RECEIVED: 07/02/81 JA: CK					
8139581	09584	3507322647	103		SHIPANEK #12-1	SCONER TREND	180.0	EASON OIL CO
-VULCAN ENERGY CORP			RECEIVED: 06/26/81 JA: CK					
8139567	09361	3507322558	103		DIERKSON #1	SCONER TREND	182.5	PHILLIPS PETROLEU
-VULCAN ENERGY CORP			RECEIVED: 07/02/81 JA: CK					
8139568	09542	3507322414	103		STUCKI #1	SOONER TREND	36.0	CITIES SERVICE CO
-W C PAYNE			RECEIVED: 07/02/81 JA: CK					
8139613	09759	3502920142	102-4		DAVIS #1	EAST OCONEE	182.0	ARKANSAS LOUISIAN
8139611	09760	3502900000	102-4		DAVIS #6	EAST OCONEE	200.0	ARKANSAS LOUISIAN
-W M & A P FULLER			RECEIVED: 06/26/81 JA: CK					
8139398	09379	3508320900	103		M A MCNEIL NO 1	NORTHEAST RUSSELL	14.0	EASON OIL CO
-W M & A P FULLER			RECEIVED: 07/02/81 JA: CK					
8139631	09385	3508321215	103		KYLE NO 1	NORTHEAST RUSSELL	50.0	EASON OIL CO
-WAGNER & BROWN			RECEIVED: 06/26/81 JA: CK					
8139411	09502	3512920501	102-4		STATE OF OKLAHOMA #2-16	S W REYDON	1750.0	EL PASO NATURAL G
8139411	09502	3512920501	103		STATE OF OKLAHOMA #2-16	S W REYDON	1750.0	EL PASO NATURAL G
-WESSELY ENERGY CORPORATION			RECEIVED: 07/02/81 JA: CK					
8139618	09591	3504921476	103		HARRIS NO 1-26	WILDCAT	65.0	WARREN PETROLEUM
-WHITMAR EXPLORATION CO			RECEIVED: 06/26/81 JA: CK					
8139369	07292	3507920377	102-4		REED NO 1	RED OAK	73.0	ARKANSAS LOUISIAN
-WILSHIRE OIL CO OF TEXAS			RECEIVED: 06/26/81 JA: CK					
8139588	09475	3504321143	102-4		MARION PICKERING #1-32	CESTOS	157.0	MICHIGAN WISCONSI
-WOODS PETROLEUM CORPORATION			RECEIVED: 07/02/81 JA: CK					
8139608	09740	3504321069	102-3		STATE OF OKLAHOMA #36-1	PUTNAM	1022.0	MICHIGAN WISCONSI
**********								
SOUTH DAKOTA DEPARTMENT OF NATURAL RESOURCE DEVELOPMENT								
**********								
-SAM G HARRISON			RECEIVED: 06/29/81 JA: SD					
8139295		4006320256	102-4		#1-30 CARVER-HEIKKILA	WEST SHORT PINE HILLS	73.0	MONTANA DAKOTA UT
8139294		4006320255	102-4		#1-6 STATE	WEST SHORT PINE HILLS	73.0	MONTANA-DAKOTA UT
8139296		4006320257	102-4		1-31 STATE	WEST SHORT PINE HILLS	73.0	MONTANA DAKOTA UT
**********								
UTAH DIVISION OF OIL,GAS, & MINING								
**********								
-BOW VALLEY PETROLEUM INC			RECEIVED: 07/07/81 JA: UT					

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JOB NO.	JOB CAT	API NO.	D SEC CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
8139317		4304700000	103	DAVIS 1-33	EAST BLUEBELL	22.0	GARY ENERGY CORP
** U.S. GEOLOGICAL SURVEY - DENVER,CO							
-AMERICAN RESOURCES MANAGEMENT CORPO			RECEIVED: 07/06/81 JA: CO 1				
8139351	CD 0133-81	0504506116	108	BEAR GULCH #19-4 C-7558	BEAR GULCH	1.6	NORTHWEST PIPELIN
8139325	CC 76-0	0510308158	108	T C #1-2 C-3640	TRAIL CANYON FIELD	15.9	NORTHWEST PIPELIN
8139362	CD 0130-81	0510308304	108	T C #1-2A	TRAIL CANYON	7.8	NORTHWEST PIPELIN
8139360	CC 79-0	0510307249	108	T C #12-1A C-3640	TRAIL CANYON FIELD	18.1	NORTHWEST PIPELIN
8139359	CC 80-0	0510307753	108	T C #13-1 C-3636-B	TRAIL CANYON FIELD	14.9	NORTHWEST PIPELIN
-ARCO OIL AND GAS COMPANY			RECEIVED: 07/06/81 JA: CO 1				
8139334	CD 0192-81	0506706378	103	SOUTHERN UTE 10-1 33-11 (MV)	IGNACIO BLANCO	103.0	WESTERN SLOPE GAS
8139328	CD 0213-81	0506706366	103	SOUTHERN UTE 17-1 32-11 (MV)	IGNACIO BLANCO (MV)	203.0	WESTERN SLOPE GAS
8139354	CD 0216-81	0506706478	103	SOUTHERN UTE 18-1 33-10 (MV)	IGNACIO BLANCO (MV)	325.0	WESTERN SLOPE GAS
8139352	CD 0191-81	0506706415	103	SOUTHERN UTE 21-1 32-8 (MU)	IGNACIO BLANCO	335.0	WESTERN SLOPE GAS
8139329	CD 0190-81	0506706396	103	SOUTHERN UTE19-1 33-10 (MV)	IGNACIO BLANCO	226.0	WESTERN SLOPE GAS
-FUEL RESOURCES DEVELOPMENT CO			RECEIVED: 07/06/81 JA: CO 1				
8139324	CD0211-81	0504506204	103	#M-23-6-104-S	CAREONERA	20.0	WESTERN SLOPE GAS
8139323	CD 0212-81	0504506215	103	P-29-6-103-S	SOUTH CANYON	53.0	WESTERN SLOPE GAS
-MITCHELL ENERGY CORPORATION			RECEIVED: 07/02/81 JA: CO 1			40.0	
8139315	CD 0003-81	0507708264	103	FEDERAL #1-18-12-97	WILDCAT	150.0	
8139316	CD 0002-81	0507708216	103	LIPAN WASH UNIT #3-15-2-2			
-MITCHELL ENERGY CORPORATION			RECEIVED: 07/06/81 JA: CO 1				
8139341	CD 0209-81	0504506282	103	FEDERAL #2-34-7-104	SOUTH CANYON - DAKOTA	300.0	COLORADO INTERSTA
-MOBIL OIL CORP			RECEIVED: 07/06/81 JA: CO 1				
8139338	CD 0035-80	0510308431	102-3	PICEANCE CREEK UNIT NC T67-136	PICEANCE CREEK	500.0	
-NORTHWEST EXPLORATION COMPANY			RECEIVED: 07/02/81 JA: CO 1				
8139309	CD 0167-81	0510308361	107-TF	PHILADELPHIA CREEK # 20	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
8139306	CD 0168-81	0510308362	107-TF	PHILADELPHIA CREEK #21	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
8139308	CD 0169-81	0510308363	107-TF	PHILADELPHIA CREEK #22	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
8139305	CD 0170-81	0510308364	107-TF	PHILADELPHIA CREEK #23	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
8139303	CD 0171-81	0510308366	107-TF	PHILADELPHIA CREEK #25	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
8139304	CD 0172-81	0510308367	107-TF	PHILADELPHIA CREEK #26	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
8139310	CD 0166-81	0510308360	107-TF	PHILADELPHIA CREEK #6	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
-NORTHWEST EXPLORATION COMPANY			RECEIVED: 07/06/81 JA: CO 1				
8139356	CD 0215-81	0504506300	103	CLOUGH 19	RULISON MESAVERDE	150.0	NORTHWEST PIPELIN
8139357	CD 0214-81	0504506300	102-0	CLOUGH 19	RULISON MESAVERDE	150.0	NORTHWEST PIPELIN
8139344	CD 0173-81	0510308368	107-TF	PHILADELPHIA CREEK #27	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
8139350	CD 0174-81	0510308369	107-TF	PHILADELPHIA CREEK #28	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
8139361	CD 0175-81	0510308376	107-TF	PHILADELPHIA CREEK #30	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
8139358	CD 0176-81	0510308377	107-TF	PHILADELPHIA CREEK #31	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
8139355	CD 0177-81	0510308382	107-TF	PHILADELPHIA CREEK #32	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
8139347	CD 0178-81	0510308381	107-TF	PHILADELPHIA CREEK #33	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
8139353	CD 0179-81	0510308378	107-TF	PHILADELPHIA CREEK #34	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
8139345	CD 0182-81	0510308380	107-TF	PHILADELPHIA CREEK #36	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
8139346	CD 0183-81	0510308457	107-TF	PHILADELPHIA CREEK #35	PHILADELPHIA CREEK MANCO	20.0	NORTHWEST PIPELIN
-TENNECO OIL COMPANY			RECEIVED: 07/06/81 JA: CO 1				
8139326	CD 0220-81	0510308309	107-TF	GOVERNMENT #10-25	FOLLATION CREEK	75.0	NORTHWEST PIPELIN
-TWIN ARROW INC			RECEIVED: 07/06/81 JA: CO 1				
8139335	CD 0185-81	0510308450	103	CONTINENTAL 3-8	CATHEDRAL	0.0	NORTHWEST PIPELIN
-WALTER S FEES JR			RECEIVED: 07/06/81 JA: CO 1				
8139339	CD 0137-81	0504506295	103	FEDERAL #1-14-84	WILLE	80.0	NORTHWEST PIPELIN
8139336	CD 0136-81	0504506287	103	GOVT #1-3-8-104	WILLE FIELD	100.0	NORTHWEST PIPELIN

JD NO	JA KT	SPACING	C	SEC	CAT	WELL NAME	FIELD NAME	PROD	PURCHASER
-BELCO PETROLEUM CORPORATION			RECEIVED: 07/02/81 JA: UT 1						
8139313	UD 0113-81	4304730289		103		CWU 42-13 30289	CHAPITA WELLS UNIT-WASAT	0.0	MOUNTAIN FUEL SUP
-BELCO PETROLEUM CORPORATION			RECEIVED: 07/06/81 JA: UT 1						
8139320	UD 0122-81	4304730660		103		CHAPITA WELLS 1-4	CHAPITA WELLS	0.0	MOUNTAIN FUEL SUP
8139321	UC 51-D	4304730326		103		DUCK CREEK 1-11G 30316	DUCK CREEK	134.0	NORTHWEST PIPELIN
8139353	UD0160-81	4304730807		103		DUCK CREEK 41-8	DUCK CREEK	0.0	NORTHWEST PIPELIN
-AMBRA OIL & GAS CO			RECEIVED: 07/06/81 JA: UT 1						
8139349	UC 185-D	4301930612		102-4		TUMBLEWEED #1	CISCO DOME	365.0	NORTHWEST PIPELIN
8139332	UD 198-D	4301930532		102-4		15-3 PETRO	CISCO WASH T21S R23E SEC	5.0	NORTHWEST PIPELIN
-CIG EXPLORATION INC			RECEIVED: 07/02/81 JA: UT 1						
8139312	UD 0108-81	4304730580		103		CIGE 61-13-9-21	NATURAL BUTTES	321.0	COLORADO INTERSTA
8139311	UD 0109-81	4304730542		103		CIGE 66-23-10-21	NATURAL BUTTES	547.0	COLORADO INTERSTA
-THOMAS D HARRISON			RECEIVED: 07/06/81 JA: UT 1						
8139319	UD 0221-81	4301930481		103		PIONEER NO 2	CISCO SPRINGS	126.0	NORTHWEST PIPELIN
-COTTON PETROLEUM CORPORATION			RECEIVED: 07/02/81 JA: UT 1						
8139314	UD 0060-80	4304730706		102-2		LOVE #A1-18	WILDCAT	0.0	
-COTTON PETROLEUM CORPORATION			RECEIVED: 07/06/81 JA: UT 1						
8139340	UD 0121-80	4304730709		103		LOVE UNIT B1-10	WILDCAT	350.0	MESA PIPELINE
-FRANK B ADAMS			RECEIVED: 06/26/81 JA: UT 1						
8139292	UD 0124-81	4301930664		102		FEDERAL #22-2	CISCO DOME (GREATER CISC	0.0	NORTHWEST PIPELIN
-COASTAL OIL & GAS CORP			RECEIVED: 06/26/81 JA: UT 1						
8139293	UC 0150-81	4304715387		108		UTE TRAIL 52X	UTE TRAIL UNIT	16.0	COLORADO INTERSTA
-J C THOMPSON			RECEIVED: 07/06/81 JA: UT 1						
8139343	UD 0207-81	4301915662		108		WESTWATER UNIT F-3	WESTWATER	7.3	NORTHWEST PIPELIN
-MAPCO PRODUCTION COMPANY			RECEIVED: 07/06/81 JA: UT 1						
8139333	UC 494-D	4304730584		102-4		RBU 11-17F	ISLAND FIELD	182.5	PACIFIC GAS & ELE
8139322	UC 187-D	4304730585		102-4		RBU 7-11F	ISLAND FIELD	182.5	PACIFIC GAS & ELE
-TENNECO OIL COMPANY			RECEIVED: 07/06/81 JA: UT 1						
8139348	UD 0217-81	4301930704		102-2		CALVINCO USA #31-12	BRYSON RIDGE	136.0	SOUTHWEST GAS COR
8139327	UD 0219-81	4301930748		103		TENNECO USA #12-9	OAKCTA	350.0	SOUTHWEST GAS COR
-UTEX OIL CO			RECEIVED: 07/06/81 JA: UT 1						
8139337	UD0156-81	4301330448		103		UTE TRIBAL 1-21C5	GREATER ALTAMONT (WASATC	115.0	KOCH HYDROCARBON
8139342	UD 0155-81	4301330499		103		UTE TRIBAL 1-29C5	GREATER ALTAMONT (WASATC	141.0	KOCH HYDROCARBON
8139318	UD0157-81	4301330501		103		UTE TRIBAL 1-31C5	GREATER ALTAMONT	0.0	KOCH HYDROCARBON
** BUREAU OF INDIAN AFFAIRS, OSAGE AGENCY, PAWHUSKA,OK									
-CHARLES O TILLMAN JR			RECEIVED: 07/01/81 JA: OK 8						
8139413		3511300000		108		LOOKOUT NO 1-A	LOOKOUT	0.0	PHILLIPS PETR CO
-OKLAHOMA DRILLING CORP			RECEIVED: 07/01/81 JA: OK 8						
8139416		3511300000		103		JOHN T OXLEY #11	EAST ATLANTIC	36.0	PHILLIPS PETROLEU
8139415		3511300000		103		JOHN T OXLEY #2-14	EAST ATLANTIC	54.0	PHILLIPS PETROLEU
-PRODUCERS OIL CO			RECEIVED: 07/01/81 JA: OK 8						
8139414		3511300000		103		ESTATE NO 2A	PAXTON	54.0	ANDOVER OIL CO
-WESTERN RESOURCE DEVELOPMENT LTC			RECEIVED: 07/01/81 JA: OK 8						
8139420		3511300000		108		LABADIE #15	LABADIE LEASE # F 0 6-74	0.0	NATIONAL ZINC CO
8139421		3511300000		108		LABADIE #16	LABADIE LEASE #F 0 6-74	0.0	NATIONAL ZINC CO
8139422		3511300000		108		LABADIE 22A	LABADIE LEASE - #F06-74	0.0	NATIONAL ZINC CO
8139417		3511300000		108		TATE #7	TATE LEASE #3322	21.0	NATIONAL ZINC CO
8139418		3511300000		108		WOOLAROC #7F	WOOLAROC 4426	0.0	NATIONAL ZINC CO
8139419		3511300000		108		WOOLAROC #91	WOOLAROC 4426	0.0	NATIONAL ZINC CO

OTHER PURCHASERS VOLUME NO 475

8139379 PIONEER GAS PRODUCTS COMPANY
8139394 PRODUCERS GAS COMPANY
8139551 ONG WESTERN INC
8139608 PUBLIC SERVICE CO OF OKLAHOMA
8139623 CHASE EXPLORATION CORP
8139624 CHASE EXPLORATION CORPORATION

BILLING CODE 6450-85-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidental under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission on or before August 17, 1981.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal seams
107–DV: Devonian shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 18: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-22356 Filed 7-30-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-392-000]

Pennsylvania Power & Light Co.; Order Granting Rehearing for Purposes of Further Consideration

Issued July 27, 1981.

MC On June 26, 1981, Pennsylvania Power and Light Company (PP&L) filed an application for rehearing of a Commission order issued on May 29, 1981, in this docket. That order conditionally accepted PP&L's rate increase filed on March 31, 1981 and imposed a five month suspension period. On June 29, 1981, a group of PP&L's affected customers [1] also filed an application for rehearing of the May 29 order.

In order to afford additional time for consideration of the issues raised in the application for rehearing, we shall grant rehearing of the May 29, 1981 order for the limited purpose of further consideration.

The Commission orders:

(A) Rehearing of the May 29, 1981 order is hereby granted for the limited purpose of further consideration.

(B) As provided in section 1.34(d) of the Commission's Rules of Practice and Procedure, no answers to the applications for rehearing will be entertained by the Commission, since this order does not grant rehearing upon any substantive issue.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-22357 Filed 7-30-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-388-000]

Virginia Electric & Power Co.; Order on Rehearing

Issued July 27, 1981.

By order issued May 28, 1981, the Commission, *inter alia*, accepted for filing and suspended for three months rate increases submitted by Virginia Electric and Power Company (VEPCO). That order also granted summary disposition of certain issues, authorized intervention, and established price squeeze and hearing procedures.

On June 26, 1981, VEPCO and ElectriCities of North Carolina (ElectriCities) filed applications for rehearing or reconsideration. Subsequently, on June 29, 1981, North Carolina Electric Membership Corporation and Albemarle Electric Membership Corporation (Cooperatives) filed an application for rehearing.

VEPCO argues that the Commission erred in granting summary disposition with respect to (1) the exclusion from rate base of the unamortized cancellation costs associated with nuclear construction projects at its North Anna and Surry sites, (2) the exclusion from rate base of capitalized expenses and AFUDC associated with the Yorktown boiler implosion, and (3) VEPCO's handling of removal costs. ElectriCities seeks reconsideration of the Commission's order insofar as it relates to VEPCO's treatment of spent nuclear fuel disposal costs, challenging both the collection of such costs subject to refund and the accounting procedures employed by VEPCO. In addition, ElectriCities challenges the suspension period imposed by the Commission. The Cooperatives allege error with respect to (1) the determination to phase the proceeding so that the price squeeze procedures commence subsequent to establishing the rate which, but for the consideration of price squeeze, would be just and reasonable, (2) the determination to allow the administrative law judge discretion as to the phasing of the price squeeze issue, and (3) the imposition of a suspension period of less than five months.

Discussion

With respect to the exclusion from rate base of the unamortized cancellation costs associated with VEPCO's three nuclear construction projects, we decline to revisit the issue in this proceeding. In Opinion No. 49, the Commission rejected a similar claim for rate base inclusion of the unrecovered portion of extraordinary property losses associated with discontinued construction.[1] Also, in Opinion No. 49, we rejected the argument that security holders should be insulated entirely from such risks. Neither in its original submittal nor in its application for rehearing has VEPCO demonstrated any factual or policy distinctions which would warrant different rate base treatment of its abandoned construction than that required in Opinion No. 49. Rehearing will therefore be denied on this issue.

In addition, VEPCO asserts that, since it has petitioned for rehearing of Opinion No. 118 [2] with regard to the exclusion from rate base of the capitalzed expense and AFUDC associated with the Yorktown implosion, the Commission's reliance on that opinion is misplaced. We note that rehearing of Opinion No. 118 was granted for the limited purpose of further consideration on June 8, 1981. However, as set forth in section 313(c) of the Federal Power Act, an application for rehearing does not operate as a stay of the underlying decision unless otherwise ordered by the Commission.

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[1] These customers include the Boroughs of Watsontown, Duncannon, Blakely, Weatherly, Schuylkell Haven, Perkasie, St. Clair, Catawissa, Ephrata, Lehighton, Olyphant, Hatfield, and Quakertown, Pennsylvania.

[1] *New England Power Company*, Docket Nos. ER76-304, *et al.*, Opinion No. 49 (July 19, 1979). That opinion is presently pending appeal before the United States Court of Appeals for the District of Columbia Circuit, *sub nom., New England Power Co.* v. *Federal Energy Regulatory Commission*, Docket Nos. 80-1343, *et al.* It, however, continues to represent established Commission policy and precedent.

[2] *Virginia Electric Power Company*, Docket No. ER78-522, Opinion No. 118 (April 10, 1981).

No such stay has been ordered with respect to Opinion No. 118. Furthermore, VEPCO has not shown any new facts or circumstances in the instant docket which would compel us to modify the pertinent portion of Opinion No. 118 at this time or to draw a different conclusion in the current proceeding. Accordingly, we shall deny rehearing of the rate base issue associated with the Yorktown implosion.

VEPCO further asserts that the Commission erred in summarily requiring the company to reduce its cost of service by the amount of the tax benefits associated with removal costs. In the instant proceeding, VEPCO indicates that its current approach differs from the methodology rejected in Opinion No. 118 and that, because this method has not previously been before the Commission, VEPCO should be permitted to demonstrate that it is proper. We agree, and will therefore grant rehearing concerning this issue. VEPCO will be given the opportunity to litigate the appropriateness of its proposed cost of service treatment of the tax benefits of removal costs at the hearing previously ordered in this docket.

With respect to ElectriCities' request for rehearing of VEPCO's treatment of spent nuclear fuel disposal costs, we shall deny rehearing. In Opinion No. 118, we noted that in the event VEPCO sought to revise its then estimated disposal cost for nuclear fuel, the company would be required to tender an appropriate filing and cost support. VEPCO has made such a filing and, consistent with the determination in our order of May 28, 1981,, we believe that ElectriCities' arguments concerning the speculative nature of VEPCO's storage costs and the proper accounting treatment should be addressed during a hearing.

The Commission will also deny rehearing with respect to the Cooperatives' arguments on the price squeeze issue. In this proceeding the Commission has followed its consistent practice in ordering phasing. That procedure is based on the belief that credible findings concerning the existence of and any remedy for price squeeze should follow a determination as to the otherwise just and reasonable rates. At the time of filing, the Commission is confronted with complex submittals which must be acted on within the limited time prescribed by statute. However, as we noted in a prior VEPCO docket,[3] "a determination as to whether a price squeeze in fact exists requires comparison of the relevant retail rate with the wholesale rate which would be considered just and reasonable in the absence of a price squeeze. In addition, we must consider the respective costs of serving the different customer classes." Based on a preliminary Commission analysis which is a rough, first-cut review, we do not believe that we should speculate as to the ultimate validity of the price squeeze allegations. Nonetheless, the rights of the parties should be amply protected by the procedures which we have implemented. The order in this docket, as is general practice, permits the administrative law judge to modify the phasing on a showing of good cause. The administrative law judge, upon hearing the positions of the parties, is in the best posture to assess the validity of their arguments.

Finally, both ElectriCities and the Cooperatives have urged reconsideration of the suspension period. They have asserted that the Commission should have suspended the rates for five months. In the instant proceeding, our preliminary analysis suggested that, after summary disposition of certain issues having a revenue reducing effect of about $3 miillion, a maximum suspension was not warranted since the resulting rates were not expected to yield substantially excessive revenues. These conclusions have not been called into question by the applications for rehearing or by our decision in this order to vacate one of our prior summary dispositions.[4] We believe that the interests of VEPCO's customers are protected by the provision for refunds of amounts in excess of a just and reasonable rate. For these reasons, the applications for rehearing of ElectriCities and the Cooperatives will be denied.

The Commission orders:

(A) The application for rehearing filed by VEPCO is hereby denied except with respect to the cost of service treatment of tax benefits associated with removal costs. Concerning that limited issue, the summary disposition required by the Commission's order of May 28, 1981, is hereby vacated and that issue shall be considered at the hearing to be held in this docket.

(B) The applications for rehearing filed by ElectriCities and the Cooperatives are hereby denied.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-22358 Filed 7-30-81; 8:45 am]

BILLING CODE 6450-85-M

[3] *Virginia Electric & Power Company*, Docket No. ER81-121-000, order denyiing rehearing, issued March 4, 1981.

[4] We note that the filed rates will be reduced by approximately $2.6 million even in the absence of summary disposition concerning VEPCO's treatment of tax benefits associated with removal costs.

Office of Hearings and Appeals

Cases Filed; Week of July 10 through July 17, 1981

During the week of July 10 through July 17, 1981, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

July 24, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of July 13 through July 17, 1981]

Date	Name and location of applicant	Case No.	Type of submission
July 13, 1981	Pierson, Semmes, Crolius, and Finley, Washington, DC	BFA-0706	Appeal of an Information Request Denial. If granted: The June 12, 1981 Information Request Denial issued by the Office of Fuels Conversion would be rescinded and Pierson, Semmes, Crolius, and Finley would receive access to the Gulf States Draft System Compliance Plan
July 14, 1981	Edgington Oil Company, Washington, DC	BEX-0219	Supplemental Order. If granted: The March 10, 1981 Decision and Order (Case No. BEN-1555) issued to Edgington Oil Company would be modified with respect to its entitlements obligations
July 14, 1981	OE/Moraga Shell & OE/Moraga Union, Washington, DC	BRR-0147 and BRR-0148	Request for Modification. If granted: The June 30, 1981, Decision and Order (Case Nos. BRR-0147, 0148) issued to Moraga Shell & Moraga Union by the Office of Hearings and Appeals would be modified regarding the computation of interest
July 14, 1981	Texaco, Inc., Washington, DC	BRR-0146	Request for Modification/Rescission. If granted: The August 15, 1980 Decision and Order (Case Nos. DRO, DRD-0166) issued to Texaco, Inc. by the Office of Hearings and Appeals would be rescinded
July 15, 1981	Edgington Oil Company, Washington, DC	BEX-0220	Supplemental Order. If granted: The March 10, 1981 Decision and Order (Case No. BEN-1555) issued to Edgington Oil Company would be modified with respect to its entitlements obligations
July 15, 1981	Mitchell Energy Corporation,, Washington, DC	BRH-0003	Motion for Evidentiary Hearing. If granted: An evidentiary hearing would be convened in connection with the Statement of Objections filed by Mitchell Energy Corporation (Case No. DRO-0093)
July 15, 1981	Nello Sbrega, d.b.a. Elmwood Service Station, West Springfield, Massachusetts.	BRR-0149	Motion for Reconsideration. If granted: The May 21, 1981 Remedial Order (Case No. BRW-0091) issued to Nello Sbrega d.b.a. Elmwood Service Station by the Office of Hearings and Appeals would be rescinded
July 17, 1981	Joe Webster, Washington, DC	BRW-0099	Proposed Remedial Order Finalization. If granted: The Office of Enforcement has requested that a Proposed Remedial Order issued to Joe Webster on February 20, 1980 be issued as a final Remedial Order.

[FR Doc. 81-22328 Filed 7-30-81; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51284; TSH-FRL-1897-3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA's statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) and November 7, 1980 (45 FR 74378). Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This notice announces receipt of four PMN's and provides a summary of each.

DATE: Written comments by:

PMN 81-302, 81-305, August 17, 1981.
81-307, 81-311, August 23, 1981.

ADDRESS: Written comments, identified by the document control number "[OPTS-51284]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-401, 401 M St., SW., Washington, DC 20460. (202-426-2610).

FOR FURTHER INFORMATION CONTACT:

For PMN No.	Notice manager	Telephone	Room No.
81-302	Kathleen Ehrensberger.	202-426-7469	E-335.
81-305, 81-307.	June Thompson.	202-755-6660	E-529C.
81-311	Rachel Diamond.	202-426-8816	E-221.

Mail address of notice managers: Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMN's received by EPA:

PMN 81-302

Close of Review Period. September 16, 1981.

Manufacturer's Identity. E. I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: substituted benzenesulfonamide.

Use. Captive intermediate.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Melting point—117-119°C.
Appearance—White crystalline solid.
Reaction—Stable to ambient conditions.
Solubility—>8% in methanol.

Toxicity Data

Oral LD_{50} (rat)—>7,500 mg/kg.
Eye irritation (rabbit)—Nonirritant.
Skin irritation and sensitization (guinea pig)—Nonirritant at 50% and 5% suspensions in dimethyl phthalate. Nonsensitizer.
Ames mutagenicity (*Salmonella typhimurium*)—Mutagenic in TA 1535 without activation.

Exposure. The submitter states that in three manufacturing sites, a total of 20 workers may have dermal and inhalation exposure to the new substance 8 hr/da, 75-120 da/yr at concentrations of 0-10 ppm.

Environmental Release /Disposal. The submitter claims that environmental release will be incidential. Waste materials are recycled and used for further chemical reaction; others are incinerated.

PMN 81-305

Close of Review Period. September 16, 1981.

Manufacturer's Identity. American Color & Chemical Corp., Mt. Vernon St., Lock Haven, PA 17745.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: 4-(dialkylamino)styryldinitrile.

Use. Commercial and consumer use in polyester fabric and commercial use in plastics.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Yellow crystalline solid.
Melting point—135°-137°C.

Toxicity Data

Acute oral toxicity, LD_{50}(rat)—<5,000 mg/kg.
Acute dermal toxicity (rabbit)—<2,000 mg/kg.
Primary skin irritation (rabbit)—Not a primary skin irritant. Irritation index=0.
Primary eye irritation (rabbit)—Nonirritant.

Exposure. The submitter states that there will be skin and inhalation exposure during the manufacture of the new substance at concentrations of 1–10 mg/m.^{3}

Environmental Release/Disposal. The submitter states that less than 20 kg/yr may be released to land and water 1 hr/da, 40 da/yr.

PMN 81–307

Close of Review Period. September 22, 1981.

Manufacture's Identity. Polymer Applications, Inc., 3445 River Road, Tonawanda, NY 14150.

Specific Chemical Identity. Alkylphenol-formaldehyde tackifying resin.

Use. Industrial rubber tackifier and adhesion promoter.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	20,000	60,000
2d year	60,000	100,000
3d year	100,000	500,000

Physical/Chemical Properties

Capillary melt point—75±10
B & R softening point—85±10
Specific gravity—1.02±02
Color—Yellow to amber.
Bulk density—40±2 lbs/cu. ft.

Toxicity Data. No data were submitted. The submitter claims that there are no known health or hazardous effects.

Exposure. The submitter states that a worker may be exposed 3 hr/da, 24 da/yr during packaging of the substance at concentrations of 1–10 ppm.

Environmental Release/Disposal. The submitter states that less than 10 kg/yr will be released into the atmosphere 3–5 hr/da, 20–24 da/yr.

PMN 81–311

Close of Review Period. September 22, 1981.

Importer's Identity. Amchem Products Inc., Brookside Ave., Ambler, PA 19002.

Specific Chemical Identity. Maleic acid, monoisooctylamide, diethanolamine salt.

Use. Industrial inhibitor in neutral cleaners for machined metal parts.

Import Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	470	1,632
2d year	326	3,264
3d year	653	6,528

Physical/Chemical Properties

Appearance—Odorless, light yellow viscous liquid.
Solubility—Miscible in water with slight turbidity. Soluble in lower molecular weight alcohols.
pH (1% water solution)—9
Volatility—Nonvolatile.
Flash point—100°C.

Toxicity Data. Oral LD_{50}(rat)-3–5 g/kg (approx.).

Exposure. The submitter states that two workers could have skin exposure 1 hr/da for 20 da/yr during processing and disposal at average and peak concentrations of 0–1 mg/m^3.

Environmental Release/Disposal. The manufacturer claims that there will be no environmental release of the new substance during processing.

Dated: July 21, 1981.

Edward A. Klein,

Director, Chemical Control Division.

[FR Doc. 81-22336 Filed 7-30-81; 8:45 am]

BILLING CODE 6560-31-M

[ER-FRL-1898-5]

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 (EISS) which have been officially filed with the EPA and distributed to Federal agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's regulations (40 CFR Part 1506.9) during the week of July 20, 1981 to July 24, 1981.

REVIEW PERIODS: The 45-day review period for draft EISS' listed in this notice is calculated from July 31, 1981 and will end on September 14, 1981. The 30-day review period for final EISS; as calculated from July 31, 1981 will end on August 31, 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 28, 1981.

William N. Hedeman, Jr.,

Director, Office of Federal Activities (A–104).

Department of Agriculture

APHI: Final—Cooperative Imported Fire Ant Program (EIS Order #810580).

FS: Draft—Pacific Northwestern Region Plan, Standards and Guidelines, Washington, Oregon, California and Idaho; the review period for this EIS has been extended until November 2, 1981 (EIS Order #810578).

FS: Final—Western Spruce Budworm Management Plan, Kaibab National Forest, Coconino County, California (EIS Order #810570).

Withdrawal: FS: Draft—Tower Mountain Area Land Management Plan, Huron-Manistee National Forest, Wexford County, Michigan—published **Federal Register** January 23, 1981—this EIS has been officially withdrawn by the USDA (EIS Order #810030).

SCS: Draft—Guayanes River Watershed Flood Protection, Yabucoa, Puerto Rico (EIS Order #810574).

SCS: Draft—Hackelbarney Watershed Protection and Flood Prevention, Adams and Montgomery Counties, Iowa (EIS Order #810577).

SCS: Final—Middle Fork of Anderson River Watershed Flood Prevention Plan, Crawford and Perry Counties, Indiana (EIS Order #810579).

Department of the Air Force

Draft—Rickenbacker Air National Guard Base, Joint Use and Disposition, Franklin and Pickaway Counties, Ohio (EIS Order #810594).

Army Corps of Engineers

Draft—Siuslaw River Small Boat Basin, Lane County, Oregon (EIS Order #810567).

Draft—Conesus Lake Flood Damage Reduction, Livingston County, New York; the review period for this EIS has been extended until September 21, 1981 (EIS Order #810575).

Final—Kill Van Kull and Newark Bay Channels Navigation Improvement,

Richmond County, New York and Union, Essex and Hudson Counties, New Jersey (EIS Order #810587).

Extension: Final—Stockton Ship Channel Navigation Improvement, Avon to Stockton, Contra Costa, Sacramento, San Joaquin and Solano Counties, California—published **Federal Register** June 19, 1981—the review period for this EIS has been extended until August 10, 1981 (EIS Order #810490).

Department of Commerce

NOAA: Final—Ocean Thermal Energy Conversion; the review period for this EIS has been extended until September 8, 1981 (EIS Order #810588).

Department of Housing and Urban Development

Draft—Atlanta Suburbia Estates, Mortgage Insurance, Rockland and Newton Counties, Georgia; the review period for this EIS has been extended until September 21, 1981 (EIS Order #810592).

Draft Supplement—Maumelle New Community, Pulaski County, Arkansas (EIS Order #810584).

Draft Supplement—Harbison New Community, Lexington and Richland Counties, South Caroline; the review period for this EIS has been extended until September 21, 1981 (EIS Order #810591).

104H: Draft—Westside Revitalization Project Phase II, CDBG, Santa Barbara County, California (EIS Order #810566).

Department of the Interior

BIA: Final—Mount Tolman Project, Ferry County, Washington (EIS Order #810571).

BLM: Draft—Powder River Regional Coal Development Leasing, Montana and Wyoming; the review period for this EIS has been extended until September 17, 1981 (EIS Order #810573).

Reopening of Comment Period: WRP: Draft—Acreage Limitation, Reclamation Act of 1902—originally published in **Federal Register** January 16, 1981 followed by notice suspending comment period in **Federal Register** March 16, 1981—review period was reopened as of July 21, 1981 and will be terminated on December 31, 1981 (EIS Order #810015).

Department of the Navy

Draft—Puget Sound Naval Shipyard Steam Plant, Kitsap County, Washington (EIS Order #810586).

Department of Transportation

FHWA: Draft—Umatilla-Stanfield Highway Improvement, Umatilla County, Oregaon (EIS Order #810585).

FHWA: Final—Marion Bypass Construction, Linn County, Iowa (EIS Order #810568).

FHWA: Final—I-670 Extension, Columbus Innerbelt and I-71 Interchange to Columbus Outerbelt and US 62 Interchange, Franklin County, Ohio (EIS Order #810569).

FHWA: Final—Old Red Trail Improvement, Morton County, North Dakota (EIS Order #810572).

FHWA: Final—I-675 Construction, US 35 to I-75, Montgomery and Greene Counties, Ohio (EIS Order #810576).

FHWA: Final—Salem Parkway and Corollary Projects, Marion County, Oregon (EIS Order #810581).

FHWA: Final—City of Columbus Railroad Relocation, Consolidation and Grade Crossing Elimination Project and Palmetto Center Project, Richland County, South Carolina (EIS Order #810582).

FHWA: Final—US 50/Cabin Branch Interchange Construction, Prince Georges, County, Maryland (EIS Order #810583).

FHWA: Final Supplement—IA-520 Construction, IA-17 to US 20, Webster and Hamilton Counties, Iowa; the review period for this EIS has been extended until September 8, 1981 (EIS Order #810589).

Extension: FRA: Final—Boston South Station Improvement Project, Suffolk County, Massachusetts—published in **Federal Register** July 10, 1981—the review period for this EIS has been extended until August 21, 1981 (EIS Order #810526).

General Services Administration

Draft—Federal Triangle Master Plan, Washington, D.C. (EIS Order #810593).

Tennessee Valley Authority

Final—Murphy Hill Coal Gasification Project, Marshall County, Alabama (EIS Order #810590).

[FR Doc. 81-22381 Filed 7-30-81; 8:45 am]

BILLING CODE 6560-37-M

[FRL-1898-4]

Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (EIS) for Waukegan Harbor, Illinois, Superfund proposal.

PURPOSE: In accordance with Section 102(2)(C) of the National Evironmental Policy Act, EPA has identified a need to prepare an EIS and publishes this Notice of Intent in accordance with 40 CFR 1501.7.

FOR FURTHER INFORMATION CONTACT: Mr. Jack E. Braun, Project Monitor, U.S. Environmental Protection Agency, Region 5, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone: 312/886-6214.

SUMMARY: The U.S. EPA Region 5 has distributed a detailed Notice of Intent for the proposed action under the authority of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund). EPA has determined that certain environmental impacts may be associated with the implementation of the "Superfund" project at Waukegan Harbor, Illinois. This Harbor has been shown to contain very high concetrations of polychlorinated biphenyls (PCB's) in the Harbor sediments. Copies of the detailed Notice of Intent are available from the Project Monitor identified above.

Scoping: EPA will hold a meeting to determine the scope of the Draft EIS on August 21, 1981 at 7:00 pm in the City of Waukegan Council Chambers, 106 N. Utica Street, Waukegan, Illinois. EPA invites full participation by individuals, private organizations, local, State and Federal agencies. If you wish to attend the scoping meeting, provide information for the EIS, be placed on the mailing list, or require further information, please contact the Project Monitor identified above. Written response to the scoping process will be accepted until August 21, 1981.

Dated: July 28, 1981.

William N. Hedeman, Jr.,

Director, Office of Federal Activities (A-104).

[FR Doc. 81-22382 Filed 7-30-81; 8:45 am]

BILLING CODE 6560-37-M

FEDERAL COMMUNICATIONS COMMISSION

FCC to Close Savannah, Ga. Field Office

July 21, 1981.

On August 1, 1981, the Federal Communications Commission's Savannah, Georgia office will close. All operator examinations, licensing, public service and enforcement services for the Savannah area will be provided by the Commission's Atlanta office, located at: Room 440, Massell Building, 1365 Peachtree Street NE., Atlanta, Georgia 30309, Phone (404) 881-3084, (404) 881-7381 (Recorded information on interference complaints, operator licensing and examination schedule).

Radio Operator Examinations will be scheduled in the Savannah area by appointment only. Appointments may be made by calling or submitting the application form to the Atlanta Office.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-22334 Filed 7-30-81; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket Nos. 81-465, 81-466; File Nos. 20521-CD-P-1-81, 20522-CD-P-1-81]

Designating Applications for Consolidated Hearing on Stated Issues; Memorandum Opinion and Order

Adopted: July 21, 1981.

Released: July 24, 1981.

In re Applications of Tel-Car, Inc. For a construction permit for an additional frequency on 454.325 MHz for Station KLF490 in the Domestic Public Land Mobile Radio Service near Pocatello, Idaho; CC Docket No. 81-465 File No. 20521-CD-P-1-81. For a construction permit for an additional frequency on 454.350 MHz for Station KRM969 in the Domestic Public Land Mobile Radio Service near Albion, Idaho; CC Docket No. 81-466 File No. 20522-CD-P-1-81.

By the Common Carrier Bureau:

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority, are the captioned applications of Tel-Car, Inc. Neither of these applications has been protested nor is either of them electrically mutually exclusive with any other application. However, our review of these applications has raised a question concerning whether Tel-Car, Inc. has demonstrated a need for an additional frequency for either Station KLF490 or KRM969, and whether Station KRM969 should be granted a height-power waiver. We find the applicant to be otherwise qualified.

2. Each application includes a traffic loading study pursuant to Section 22.516 of our Rules in an attempt to demonstrate a need for the additional two-way frequency it requests. However, neither of the loading studies shows sufficient traffic to justify an additional frequency. The KRM969 traffic loading study plus held orders shows a probability of blocking of .27 for two channels. The Station KLF490 traffic loading study plus held orders shows a probability of blocking of .41 for three channels. As a result, we will designate an issue as to whether either of the applications has adequately demonstrated a need for an additional frequency.

3. In the application of Station KRM969, Tel-Car requested a waiver of Section 22.505 of the Rules to operate with maximum effective radiated power (ERP) of 354 watts. Without such a waiver the maximum ERP would be only 10 watts. The applicant claims that the public need in the area cannot be adequately served without such a waiver. Section 22.505 requires that an applicant who desires to provide service to an extended area should accomplish this by means of additional transmitters or by changing antenna sites.[1] We do not find that Tel-Car, Inc. has made a sufficient showing in this case to justify a waiver of Section 22.505 and the request is denied. If the Station KRM969 application is granted by the Administrative Law Judge, it should be granted with a maximum effective radiated power of 10 watts in conformity with Section 22.505 of the Rules.

4. Accordingly, it is ordered, That the applications of Tel-Car, Inc., File No. 20521-CD-P-1-81 and File No. 20522-CD-P-1-81, are designated for hearing in a Consolidated Proceeding,[2] pursuant to Section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

(a) To determine whether Tel-Car, Inc. for Station KLF490 has demonstrated a need for an additional frequency;

(b) To determine whether Tel-Car, Inc. for Station KRM969 has demonstrated a need for an additional frequency; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of these applications would best serve the public interest, convenience, and necessity.

5. It is further ordered, That the request for waiver of Section 22.505 of the Rules in File No. 20522-CD-P-1-81, IS DENIED.

6. It is further ordered, That the hearing shall be held at the Commission offices at a time and place and before an Administrative Law Judge to be specified in a subsequent order.

7. It is further ordered, That the Chief, Common Carrier Bureau, is made a party to this proceeding.

8. It is further ordered, That the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to Section 1.221(c) of the Rules within 20 days of the release date hereof, a written notice stating an intention to appear on the date for a hearing and present evidence on the issues specified in this Memorandum Opinion and Order.

9. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Sheldon M. Guttmann,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 81-22341 Filed 7-30-81; 8:45 am]

BILLING CODE 6712-01-M

[1] See James Edwin Walley d.b.a. Autofone, MO&O released November 14, 1980, Mimeo 01548.

[2] Although these applications are not directly tied together, these applications are being designated in a consolidated proceeding rather than in separate proceedings for the convenience of the applicants since they are the same and have the same counsel.

Radio Technical Commission for Marine Services; Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

William J. Tricarico,

Secretary, Federal Communications Commission.

Special Committee No. 78
Notice of 7th Meeting
Wednesday, August 19, 1981—9:30 a.m.
Conference Room 8236
Nassif (DOT) Building
400 Seventh Street, S.W. at D Street
Washingdton, DC

Agenda

1. Call to order and administrative matters.

2. Review of Federal Radionavigation Plan.

John C. Fuechsel, Chairman SC-78
National Ocean Industries Assoc.
1100 17th Street, N.W.
Washington, DC
Phone: (202) 785-5116

Executive Committee Meeting
Notice of August Meeting
Thursday, August 20, 1981—9:30 a.m.
Conference Room A-110
1229 20th Street, N.W.
Washington, D.C.

Agenda

1. Administrative Matters.

2. Consideration of Special Committee No. 75 Report.

3. Consideration of Terms of Reference for new Special Committees:

a. Review of FCC Rules as required by Regulatory Flexibility Act of 1980.

b. Revision of SC-65 Radar Specifications to be compatible with IMCO Radar Specifications.

4. Resolution to amend RTCM Constitution.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by

previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

[FR Doc. 81-22340 Filed 7-30-81; 8:45 am]
BILLING CODE 6712-01-M

[CC Docket No. 80-286]

Chairman Fowler Calls Joint Board Meeting

July 17, 1981.

Chairman Mark S. Fowler has called a meeting of the Federal-State Joint Board in CC Docket No. 80-286, *Amendment of Part 67 of the Commission's Rules* for August 5, 1981 from 10:00 to 12:00 a.m. in the Coronet Room of the Westgate Hotel in San Diego, California. This meeting is being held in conjunction with the National Association of Regulatory Utility Commissioners' Executive Committee meeting.

The Commission instituted this proceeding in June 1980 to amend Part 67 of the Rules concerning the allocation of telephone company expenses and investment between the interstate and intrastate jurisdictions. The Federal-State Joint Board, composed of three FCC Commissioners and four State Commissioners, was established pursuant to Section 410(c) of the Communications Act.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 81-22461 Filed 7-30-81; 8:45 am]
BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

Performance Review Board

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the GSA Performance Review Boards.

FOR FURTHER INFORMATION CONTACT: Gregory Knott, Director, Executive Resources Division, General Services Administration, Office of Human Resources and Organization, Executive Resources Division, Office of Personnel, 18th and F Streets, NW, Washington, D.C. 20405, (202) 566-1207.

SUPPLEMENTARY INFORMATION: Sec. 4314(c) (1) through (5) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The boards shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The members of the General Performance Review Board are:

1. Allan W. Beres, Commissioner, Transportation and Public Utilities Service, GSA
2. Daniel M. Hughes, Deputy Undersecretary for Field Coordination, HUD
3. Allie B. Latimer, General Counsel, GSA
4. Clarence A. Lee, Jr., Regional Administrator, Region 3, GSA
5. Norman L. Linton, Director of Personnel, GSA
6. Arlene D. Schley, Assistant Regional Administrator for Administration, Region 6, GSA
7. Gerald J. Turetsky, Regional Administrator, Region 2, GSA

An additional Key Executive Performance Review Board with the responsibility for reviewing the ratings of the members of the Performance Review Board and those senior executives reporting directly to the Administrator or Deputy Administrator will consist of:

1. Jerald D. Fox, Acting Executive Assistant to the Deputy Administrator, GSA
2. Saul Katz, Special Counsel to the Administrator for Ethics, GSA
3. Norman L. Linton, Director of Personnel, GSA
4. Arlene D. Schley, Assistant Regional Administrator for Administration, Region 6, GSA
5. Robert A. Turnbull, Associate Deputy Administrator, SBA

Dated: July 27, 1981.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-22333 Filed 7-30-81; 8:45 am]
BILLING CODE 6820-30-M

U.S. Court Expansion; Charleston, South Carolina, Record of Decision

The U.S. General Services Administration (GSA) has made the decision below according to the regulations of the Council on Environmental Quality (40 CFR Part 1505.2) and the GSA Handbook, PBS Preparation of Environmental Assessments and Environmental Impact Statements (PBS P 1095.4A).

Decision

The U.S. General Services Administration (GSA) has decided to propose the construction of a Courthouse Annex to the U.S. Post Office and Courthouse (PO & CT) in Charleston, South Carolina, and to propose the repair and alteration of the PO & CT in order to connect it with the Annex.

Project Description

The proposed Courthouse Annex in Charleston, South Carolina, will be approximately 30,000 gross square feet in size and will contain about 21,000 occupiable square feet. The Annex will be placed on the same site with and to the rear of the existing U.S. Post Office and Courthouse (PO & CT) and will cover an area of about 10,000 square feet. The Government-owned Post Office Park may be relocated on the site to extend along the Meeting Street boundary, which which will expand the amount of green space visible to the public from the street.

The present U.S. Post Office and Courthouse (PO & CT) contains 28,197 occupiable square feet and an extension of 2300 occupiable square feet that will be demolished to make way for the building's connection with the new Annex. The repair and alteration proposed for the PO & CT includes partition and space changes and upgrading of mechanical equipment systems, as well as improvements needed for the existing fire safety, life safety, and security systems of the building.

The U.S. Post Office and Courthouse (PO & CT) is located at the intersection of Broad and Meeting Streets on one of Charleston's traditional "Four Corners of Law." The building was constructed in 1896 and is listed on the National Register of Historic Places. The building is located in a Historic Landmark District which, in turn, is located within the Old and Historic Charleston District. The site is located in the Central Business Area of the city and is in the neighborhood of Charleston known as the Peninsula.

Actual construction of the proposed Annex will probably not begin before 1984. Prior to that GSA will have a Historic Structures Report prepared to provide guidelines for preserving and minimizing impacts upon the historical and architectural significance of the existing U.S. Post Office and Courthouse, its site, and the historic district in which it is located. The report will also provide guidelines for design of the new Annex, for preservation of open

space on the site, for site design and layout, and for construction methods that will avoid damage to neighboring structures.

Before further study the U.S. General Services Administration (GSA) will need approval of the project from Congress. Following approval GSA will require a geo-technical engineer to be made part of the project design team. This engineer will make a sub-surface investigation of the site to determine soil conditions and to indicate any measures needed to avoid damage to neighboring structures. Following this site survey an architectural/engineering firm will design the project. After the project has been designed GSA will have an archeological analysis made of portions of the site affected by the project and, if necessary, will have a mitigation plan prepared and implemented. After the archeological mitigation GSA will make an award for construction to begin.

The purpose of the proposed project is to provide space for the expansion of the U.S. District Court for South Carolina. Added courts and support facilities are needed to enable two additional judges to effectively adjudicate the greatly increased Federal caseload in the state. By providing a building adjacent to the existing site court-related facilities can be shared rather than requiring the costly duplication of facilities that would be needed for a separate location elsewhere. The two buildings are being connected to provide for the secure transfer of prisoners. By remaining on the present site GSA fulfills several of its mandates as well as preserve the historic tradition of the site.

The Federal Property and Administrative Services Act of 1949, which established the GSA, provides for maximum utilization of Government-owned property in order to minimize expenditures for property.

The Public Buildings Act of 1959, as amended, (Pub. L. 96–249) authorizes GSA to acquire by purchase, construct, and alter buildings for use as public buildings by the Federal government. To carry out this responsibility, surveys of the Federal space situation are periodically conducted in order to ascertain Federal housing needs in specific community.

General Services Administration must also consider Executive Order 12072, which is entitled *Federal Space Management*. The purpose of this Executive Order is to strengthen the Nation's cities, to conserve urban resources, and to encourage urban development and redevelopment through intergovernmental cooperation between Federal, state, and local agencies, via location of Fedral office space to centralized community business areas (per 5/81 Memo from OMB—do not give priority).

The Public Buildings Cooperative Use Act of 1976 encourages the adaptive reuse by the Federal Government of buildings which have historical, architectural, and cultural significance, where feasible. Accordingly primary consideration is given to such properties for possible use as Federal Buildings.

The National Historic Preservation Act of 1966 requires that Federal departments take into account the effect of any proposed undertaking upon buildings or sites listed in the National Register of Historic Places prior to approval for the expenditure of public funds, so that historical and cultural foundations of the Nation are preserved as a living part of our community life. Thus, when GSA began considering various alternatives for meeting the continuing housing needs of Federal agencies in Charleston, the construction of an Annex, which is located in the Charleston CBA, was strongly considered since this alternative would permit compliance with the aforementioned policy objectives.

Alternatives Considered

GSA considered the following alternatives in reaching its decision:

1. No action.
2. Annex construction on site.
3. Conversion of Post Office space for court use.
4. New construction off site.
5. Leasing.
6. Acquisition of adjacent privately-owned building.
7. Use of Government-owned buildings.

Alternatives 1, 4, 5, and 7 would result in no action being taken at the site of the proposed project.

Alternatives 2, 3, and 6 would result in action at the proposed site.

Basis for Decision

GSA based its decision to propose the Courthouse Annex on a combination of environmental and national policy factors as shown in Table 1. The points in the table indicate the favorable impact of an alternative upon a factor. The visual aspect of historic preservation refers to the architectural significance of the historic buildings and district. The traditional aspect refers to the historic tradition of the Four Corners of Law. GSA assigned higher points to the more important factors of providing adequate space to fulfill agency mission and of preserving the historic tradition of the site and historic district. The points are illustrative only and do not have an intrinsic value. They are intended to show the relationships among the factors considered for each alternative. Not shown in the table are environmental factors of floodplain and seismic risk, which are not favorable for any of the alternatives.

Although the alternatives of no action and of acquisition of the adjacent privately-owned building were environmentally preferred, neither of these alternatives would enable GSA to provide for the space requirements of the U.S. Courts and so enable them to perform their mission. Space in the adjacent building was too small. Furthermore the building was not available for purchase, and condemnation costs would have been prohibitive.

GSA investigated conversion of the Post Office space in the PO & CT to courtroom use and also investigated the use of other Government-owned buildings in Charleston. None of the available space was both adequate in size and suitable for conversion to courtroom space.

The alternatives of new construction or leasing away from the present site would not permit connection with the existing court-related facilities, so that the facilities would have to be duplicated. If the entire courts and related facilities were moved to a new site this would break the historic tradition of the Four Corners of Law, a vital tradition to a city that prides itself as the preservation capital of the nation.

Table 1.—*Factors in Selection of Alternative for U.S. Court Expansion, Charleston, South Carolina*

Factor	Alternative						
	1	2	3	4	5	6	7
	No action	Annex construction on site	Conversion of post office	New construction off site	Leasing	Acquisition of adjacent building	Use of Government-owned buildings
Environmental factors:							
Historic preservation:							
Visual	1	0	0	1	1	1	0
Traditional	2	2	2	0	0	2	0
Open space	1	0	1	1	1	1	1

Table 1.—*Factors in Selection of Alternative for U.S. Court Expansion, Charleston, South Carolina*—Continued

Factor	Alternative 1 No action	2 Annex construction on site	3 Conversion of post office	4 New construction off site	5 Leasing	6 Acquisition of adjacent building	7 Use of Government-owned buildings
Parking & traffic	0	0	0	1	1	0	1
Zoning	1	0	1	1	1	1	1
Subtotal	5	2	4	4	4	5	3
National policy factors:							
Agency mission:							
Space	0	3	0	3	3	0	0
Connection	0	1	1	0	0	1	0
Gov't owned	1	1	1	0	0	0	1
Historic building	1	1	1	0	0	1	0
In CBA	1	1	1	1	1	1	1
Total points	8	9	8	8	8	8	5

0: No significant impact. 1: Slight beneficial impact. 2: Moderate beneficial impact. 3: Significant beneficial impact.

The alternative of constructing a Courthouse Annex on the site, while not invironmentally preferred, enables GSA to provide adequate space so that the Courts can effectively perform their mission and avoid the necessity for costly duplication of court-related facilities that would be required for a location elsewhere. The project also enables GSA to utilize Government-owned property and prevent the need for additional expenditure for acquisition, and to utilize the historic building as well. All of the alternatives could potentailly be located in the Central Business Area (CBA), although GSA considered the possibility of outside locations as well.

In arriving at its decision GSA fully utilized National Environmental Policy Act procedures to involve the interested public. GSA held a Scoping Meeting to define environmental issues; prepared, and circulated, a draft Environmental Impact Statement (EIS), held a public meeting that addressed the issues; and circulated a final EIS with responses to the comments received.

Mitigation and Monitoring

GSA plans to mitigate possible adverse impacts on historic preservation—visual aspects, open space, parking and traffic, and zoning, for the site and the historic district of the proposed project. GSA will use a Historic Structures Report (HSR) to guide design and construction of the new Annex and will also use the HSR to guide preservation of open space on the site, traffic routing through the site, and design of buffer areas between the site's added institutional use and the adjacent residential zones.

To help meet additional parking demand generated by the increased Court activity GSA will encourage City officials and commercial developers to provide more parking facilities in the vicinity of the project site. GSA's own parking policy is currently limited to provision of the minimum spaces needed for patron, handicapped persons, Government-owned, and official vehicles only. In addition GSA will encourage employees and the public to make heavy use of transit systems, van pooling, and ride sharing to ease pressure on the present limited parking facilities in the project area.

GSA will also use as mitigative measures a sub-surface site survey, development of the project architectural/engineering design, archeological analysis, and monitoring of the construction contract. GSA will use these mitigative measures to avoid damage to neighboring structures, prevent loss of any important archeological artifacts, and incorporate energy conservation measures into the project, as well as to preserve the historical and architectural significance of the project site and the historic district in which it is located.

Conclusion

GSA conscientiously explored every conceivable alternative for expansion of the U.S. District Court in Charleston, South Carolina, whether the alternative appeared feasible or not. After a thorough investigation GSA found that to meet the needed space requiements of the Courts, meet GSA's other mandates, and meet community needs as well, construction of the proposed Courthouse Annex is not only the best overall solution, but also the only feasible alternative.

GSA has planned mitigative measures for all possible adverse effects of the project and, if approved, GSA intends to carry out the project with the greatest care and the utmost sensitivity to the preservation needs of the unique Charleston community.

With the continued assistance and ongoing involvement of local historic preservation groups and other interested parties, the project will be an asset to the community and will enhance the area of which Charlestonians are so deservedly proud.

Dated: July 8, 1981.

Wesley L. Johnson, Jr.,

Regional Administrator.

[FR Doc. 81-22312 Filed 7-30-81; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 80D-0416]

Action Level for N-Nitrosodimethylamine in Barley Malt; Availability of Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of FDA Compliance Policy Guide 7104.07 establishing an action level for *N*-nitrosodimethylamine in barley malt. FDA has determined that *N*-nitrosodimethylamine in barley malt is avoidable at levels greater than 10 parts per billion (ppb) and has established that level as a basis for regulatory action.

ADDRESS: Written comments on the action level and method of analysis and requests for single copies of FDA Compliance Policy Guide 7104.07 and/or method of analysis should be submitted to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard N. Pippin, Bureau of Foods (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3092.

SUPPLEMENTARY INFORMATION: In August 1978, after learning that German researchers had reported finding low levels of *N*-nitrosodimethylamine (NDMA) (also known as dimethylnitrosamine (DMNA)) in beer, FDA began to investigate the extent of NDMA contamination in beer and other malt beverages available in the United States. Subsequently FDA established an action level of 5 ppb for the chemical in malt beverage and published in the

Federal Register of June 10, 1980 (45 FR 39341) a notice of availability of the Compliance Policy Guide containing that action level. In that notice the agency referred to the chemical as dimethylnitrosamine or DMNA. This notice involves the same chemical; however, FDA scientists have concluded that the more accurate name for the compound is *N*-nitrosodimethylamine (NDMA). Accordingly, that is the name that is used in this notice.

The FDA worked closely with the United States Brewers Association (USBA) to ensure that the amount of NDMA in malt beverages was reduced to the lowest possible level as soon as possible.

Based on evidence obtained from analysis of domestic and imported malt beverages and from information provided by the USBA, the agency determined that the level of NDMA in malt beverages could be reduced to or below 5 ppb, the lowest practicable level at which the presence of NDMA in malt beverages can be confirmed by reliable methodology. An action level of 5 ppb NDMA in malt beverages became effective January 1, 1980 (45 FR 39341).

Studies by German researchers and the USBA indicated that NDMA in malt beverages is formed during kilning or drying of the barley malt. Barley malt is produced by moistening the barley with water, allowing it to germinate and then drying (kilning) to reduce the moisture content to approximately 4 percent. NDMA formation occurs as a result of a reaction between amines, which are naturally present in the barley, and a nitrosating agent, such as nitrogen oxides (NO_x), which may be present in the air or may be formed during combustion of the fuel used for firing. It has been found that, generally, higher levels of NDMA are formed when direct fire (open flame) is used to dry the malt than when indirect fire is used.

To determine the extent to which NDMA formation in barley malt could be reduced. FDA inspected all know domestic malt producers and collected samples of domestic and imported malts for NDMA analysis. All domestic malt producers using direct firing had modified their kilning procedures by adding sulfur or increasing the amount of sulfur burned while drying the barley. Some of the malt processors also were contemplating installing special burners which would emit fewer nitrosating agents.

Ninety-four domestic samples and 77 import samples of barley malt were analyzed for NDMA. Four of the domestic samples and 13 of the import samples were found to contain greater than 10 ppb NDMA. A report on the analysis of the samples has been filed with the Dockets Management Branch under the docket number found in brackets in the heading of this document.

On the basis of evidence provided by the agency's investigations of barley malt, FDA has determined that the level of NDMA in barley malt can be reduced to or below 10 ppb NDMA. The 10 ppb level represents the lowest practicable limit for confirming the presence of NDMA in barley malts for regulatory purposes. FDA, therefore, established 10 ppb NDMA in barley malt as an action level in accordance with 21 CFR 109.6.

In establishing an action level the agency must consider whether the level is sufficient for the protection of public health. NDMA has been shown to cause cancer in laboratory animals and, as with other carcinogenic substances, a level of safety for NDMA from barley malt cannot be established at this time. Because of the potential human carcinogenic effects of the contaminant, the agency has determined that it is necessary to minimize human exposure to the lowest practicable level. In determining that practicable level, the agency has taken into account the extent to which NDMA in barley malt can be reduced by good manufacturing practices. Based on these considerations, 10 ppb NDMA was determined to be the lowest practicable level for enforcement purposes.

The 10 ppb action level does not establish a "safe" level for consumption but does represent the lowest level at which the presence of NDMA in barley malt can be confirmed by reliable methodology. In addition, available evidence indicates that malt processors can alter the barley kilning process so that NDMA formation is reduced down to or below the 10 ppb level. The extent to which NDMA in barley malt can be reduced below 10 ppb cannot be determined at this time. However, as technology becomes available that can further reduce the level of NDMA formed during processing of the barley and can confirm the presence of NDMA in barley malt, FDA will reevaluate the appropriateness of the action level. Further, barley malt is diluted tenfold during the production of malt beverages such as beer and ale. Therefore, FDA is confident that malt beverages produced from barley malt containing less than 10 ppb NDMA will contain less than the 5 ppb action level set by FDA for malt beverages (45 FR 39341).

The method of analysis that is used for determining compliance with the action level was published in the Journal of Food Science, Vol. 46(2):501–505, 1981. A copy of the method is on file with the Dockets Management Branch, address above.

The 10 ppb action level for NDMA in barley malt is set forth in FDA Compliance Policy Guide 7104.07. Background data supporting the action level are on file in the Dockets Management Branch. Requests for single copies of FDA Compliance Policy Guide 7104.07 and/or method of analysis should reference the docket number found in brackets in the heading of this document and should be submitted in writing to the Dockets Management Branch, Food and Drug Administration (address above).

Interested persons may submit to the Dockets Management Branch, Food and Drug Administration, written comments (preferably four coplies and identified with the docket number found in brackets in the heading of this document) regarding this action level. Received comments are available for examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 8,1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-22326 Filed 7-30-81; 845 am]

BILLING CODE 4110-03-M

Consumer Participation; Open Meeting

AGENCY: Foood and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by William R. Clark, District Director, Chicago District Office, Chicago, IL.

DATE: The meeting will be held from 10 a.m. to 12 m., Friday, August 14, 1981.

ADDRESS: The meeting will be held at the Cabrini Green Housing Project, 1161 N. Larrabee, Rm. 204, Chicago, IL 60610.

FOR FURTHER INFORMATION CONTACT: Darlene M. Bailey, Consumer Affairs Officer, Food and Drug Administration, 433 W. Van Buren, Main Post Office Bldg., Chicago, IL 60607, 312–353–7126.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance understanding and exchange information between local consumers and FDA's Chicago District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: July 24, 1981.

William F. Randoph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-22319 Filed 7-30-81; 8:45 am]

BILLING CODE 4110-03-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by James A. Adamson, District Director, Kansas City District Office, Kansas City, MO.

DATE: The meeting will be held from 9:30 a.m. to 12 m., Friday, August 7, 1981.

ADDRESS: The meeting will be held at the Iowa Rural Electric Cooperative Office Bldg., NE. Corner, 86th and Douglas Streets, Urbandale, IA 50322.

FOR FURTHER INFORMATION CONTACT: Julia S. Hewgley, Consumer Affairs Officer, Food and Drug Administration, 1009 Cherry St., Kansas City, MO 64106, 816-374-3817.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorites for current and future health concerns, to enhance understanding and exchange information between local consumers and FDA's Kansas City District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: July 24, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-22320 Filed 7-30-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 81D-0147]

Defect Action Levels for Canned and Frozen Peaches; Availability of Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of FDA compliance Policy Guide 7110.22 establishing defect action levels for mold and insect contamination in frozen peaches and revising the defect action levels for mold and insect contamination in canned peaches.

ADDRESS: Written comments on the defect action level and requests for single copies of FDA Compliance Policy Guide 7110.22 should be submitted to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard N. Pippin, Bureau of Foods (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3092.

SUPPLEMENTARY INFORMATION: FDA's guidelines that set forth defect action levels for mold and insect contamination in canned peaches have been set forth since 1973 as FDA Administrative Guideline 7410.16. These defect action levels are quantitative statements of the levels of mold and insect contamination that will set in motion FDA regulatory action. Defect action levels are revised as necessary to reflect technological advances or changes in problems related to the commodities in order to provide the highest standard of quality feasible for food in today's market.

The previous defect action levels had been in effect since 1937, essentially without change. Since then, horticultural practices and processing equipment and techniques have changed sufficiently to justify FDA's reevaluation of its regulatory position on defects in canned peaches.

In 1974-1975, FDA conducted a review to determine the incidence of mold, filth, and decomposition in canned peaches and various other canned foods. Samples of canned peaches were collected nationwide from retail markets in standard metropolitan statistical areas in each FDA district in proportion to the number of manufacturers in that district. FDA believes that the samples represent all growing regions and packers. FDA has evaluated the results of the 1974-1975 survey and has concluded that existing defect action levels for canned peaches need to be revised.

The survey conducted during FDA's review showed that 96.6 percent of the samples analyzed had no defects. The defect action levels for mold and insect contamination in canned peaches have, therefore, been changed to reflect the high quality of canned peaches that exist in today's market. Although no samples of frozen peaches were taken in the survey, there should be no significant difference in quality between canned and frozen peaches.

An updated FDA Compliance Policy Guide 7110.22 has been issued to replace FDA Administrative Guideline 7410.16, which previously set the defect action levels for mold and insect defects in canned peaches at 5 percent or more by count. The updated FDA Compliance Policy Guide 7110.22 applies to frozen peaches as well as canned peaches. It sets the defect action level for mold defects in these peaches at 3 percent or more by count and the defect action levels for insect defects at 3 percent or more by count, or one or more whole larvae or larval fragments (whose aggregate length exceeds 5 millimeters) in twelve 1-pound cans or equivalent.

Background data supporting the revised defect action levels are on file in the Dockets Management Branch. Requests for single copies of FDA Compliance Policy Guide 7110.22 should reference the docket number found in brackets in the heading of this document and should be submitted in writing to the Dockets Management Branch, Food and Drug Administration (address above).

Interested persons may submit to the Dockets Management Branch, Food and Drug Administration, written comments (preferably four copies and identified with the docket number found in brackets in the heading of this document) regarding these defect action levels. Received comments are available for examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 8, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-22324 Filed 7-30-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 81D-0148]

Defect Action Levels for Canned Tomato Products; Availability of Guides

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of FDA Compliance Policy Guides 7114.29a and 7114.30a, which establish revised defect action levels for canned tomato juice, sauce, paste, puree, and soup that are contaminated by mold, rot, drosophila fly eggs, and maggots.

ADDRESS: Written comments on these defect action levels and requests for single copies of FDA Compliance Policy Guides 7114.29a and/or 7114.30a should be submitted to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

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

SUPPLEMENTARY INFORMATION: FDA's guidelines that set forth defect action levels for certain canned tomato products contaminated by mold, rot, drosophila fly eggs, and maggots previously appeared as FDA Administrative Guidelines 7414.16 and 7414.17. These defect action levels are the conditions and quantitative statements of the levels of mold, rot, and fly and maggot contamination that will set in motion FDA regulatory action. Defect action levels are revised as necessary to reflect technological advances or changes in problems related to the commodities in order to provide the highest standard of quality feasible for food in today's market.

Since the previous defect action levels for canned tomato products were established, varieties of tomatoes which are suitable for machine harvesting have been developed and are now used for the majority of tomato products in the marketplace. These varieties are less susceptible to cracking and to related mold and fly contamination problems.

In 1974–1975, FDA conducted a review to determine the incidence of mold, filth, decomposition, and insect contamination in canned tomato products and various other canned foods. Samples of tomato products were collected nationwide from retail markets in standard metropolitan statistical areas in each FDA district in proportion to the number of manufacturers in that district. FDA believes that the samples represent all growing regions and packers. FDA has evaluated the results of the 1974–1975 survey and has concluded that existing defect action levels for tomato juice, sauce, soup, paste, catsup, and puree need to be revised.

Updated FDA Compliance Policy Guides 7114.29a and 7114.30a have been issued to replace FDA Administrative Guidelines 7414.16 and 7414.17, which previoulsy set the defect action levels for mold and insect defects in certain tomato products. The updated FDA Compliance Policy Guide 7114.29a revises defect action levels for drosophila fly eggs and maggots in all tomato products covered under the previous guideline, except canned tomatoes, where the defect action level remains unchanged. The updated Guide also contains criteria for taking regulatory action when piza and other sauces (e.g., spaghetti, Mexican style, etc.) are contaminated with the drosophila fly eggs and larvae. The updated FDA Compliance Policy Guide 7114.30a contains revised defect action levels for mold count in all tomato products covered by the previous guidleline. It also includes a requirement that rot fragment counts be conducted on all products, except spray-dried tomato powder, when mold count criteria are met.

Background data supporting the revised defect action levels are on file in the Dockets Management Branch. Requests for single copies of FDA Compliance Policy Guide 7114.29a and/or 7114.30a should reference the docket number found in brackets in the heading of this document and should be submitted in writing to the Dockets Management Branch, Food and Drug Administration (address above).

Interested persons may submit to the Dockets Management Branch, Food and Drug Administration, written comments (preferably four copies and identified with the docket number found in brackets in the heading of this document) regarding these defect action levels. Received comments are available for examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 8, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–22322 Filed 7–30–81; 8:45 am]
BILLING CODE 4110–03–M

[Docket No. 80D–0415]

Defect Action Level for Decomposition in Imported Canned and Cooked/Frozen Shrimp; Availability of Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of FDA Compliance Policy Guide 7119.13 establishing a defect action level for indole in imported canned and cooked/frozen shrimp. Such shrimp with indole levels which equal or exceed 25 micrograms per 100 grams will not be permitted to enter the United States.

ADDRESS: Written comments on the defect action level and requests for single copies of FDA Compliance Policy Guide 7119.13 and/or FDA Laboratory Information Bulletin No. 2430 should be submitted to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

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

SUPPLEMENTARY INFORMATION: During fiscal year 1979, FDA identified an extensive problem of *Salmonella*, decomposition and filth in frozen raw shrimp imported from Bangladesh, Hong Kong, India, Indonesia, Taiwan, and Thailand. In response to this problem, FDA placed entries of frozen raw shrimp from these countries under a program of automatic detention (India was later removed from this program). Shortly after this program was instituted, there were indications that, because processing masks the odors of decomposition, shrimp from these countries was being canned or cooked before it is frozen, before importation into the United States. Further, there were indications that in some cases the processing of the shrimp was taking place in intermediate countries as well as the source country. As a result, FDA began sampling all entries of imported processed shrimp. Analysis of the samples has revealed that there is also an extensive problem of decomposition and filth in imported processed shrimp.

In one type of decomposition in shrimp, indole is formed by the action of certain species of bacteria (e.g., *Proteus, E. coli, Providencia*, etc.) on tryptophan, an amino acid (indole amino propionic acid). Scientific evidence indicates that there is a direct relationship between the presence of indole and decomposition which is due to indole-forming bacteria. A study cnducted by FDA and reported in the *Journal of the Association of Official Analytical Chemists* (AOAC), 29:177–178, 1946, established that for this type of decomposition, the indole content increases as the decomposition advances; consequently, the indole content of shrimp is a measure of the extent of decomposition. Fresh shrimp does not contain indole in excess of one microgram per 100 grams. Shrimp containing 25 micrograms per 100 grams is clearly decomposed. The agency has recently issued FDA Compliance Policy Guide 7119.13 concerning imported canned and cooked/frozen shirmp, the most abundant forms of imported processed shrimp. This guide states that entries of such shrimp with indole levels which equal or exceed 25 micrograms per 100 grams will be detained. This guide notes that it is not applicable to domestically processed shrimp because FDA is able to inspect the quality of

such shrimp before processing.

Two methods of analysis may be used to determine compliance with the indole defect action level. One method appears in Official Methods of Analysis of the Association of Official Analytical Chemists, 13th edition, sections 18.075–18.078 (copies are available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044). The other method appears in FDA's Laboratory Information Bulletin No. 2430 and is on file with the Dockets Management Branch.

Background data supporting the defect action level are on file with the Dockets Management Branch. Requests for single copies of FDA Compliance Policy Guide 7119.13 and/or FDA's Laboratory Information Bulletin No. 2430 should reference the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch, Food and Drug Administration (address above).

Interested persons may submit to the Dockets Management Branch, Food and Drug Administration, written comments (preferably four copies and identified with the docket number found in brackets in the heading of this document) regarding this defect action level. Received comments are available for examination in the office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 8, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-22323 Filed 7-30-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 81D-0176]

Defect Action Level for Mold in Apricot, Peach, and Pear Nectars; Availability of Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of FDA Compliance Policy Guide 7110.31 establishing a defect action level for mold in apricot, peach, and pear nectars.

ADDRESS: Written comments on the defect action level and requests for single copies of FDA Compliance Policy Guide 7110.31 should be submitted to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard N. Pippin, Bureau of Foods (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3092.

SUPPLEMENTARY INFORMATION: In fiscal year 1977, FDA initiated a retail market survey to determine whether apricot, peach, and pear nectars were being extensively adulterated with rotten fruit. During this survery, FDA contracted with an independent organization for the collection of representative samples of fruit nectars from retail grocery stores throughout the United States. In addition, FDA contracted with a second independent organization for mold, insect filth, and rodent filth analyses on the samples collected. Data were obtained on 427 samples of apricot nectar, 244 samples of peach nectar, and 216 samples of pear nectar.

FDA's evaluation of the above retail market survey indicates that at this time, apricot, peach, and pear nectars are not extensively adulterated with rotten fruit. Analyses of survey samples revealed very low levels of insect and rodent filth (by Official Methods of Analysis of the Association of Official Analytical Chemists, 13th ed., sections 44.101 and 44.100) and moderate levels of mold (by Howard mold count with sample preparation procedure specified in Microanalytical Manual Method M13X (January 1981)). The moderate levels of mold are demonstrated by the fact that 1.9 percent of the pear nectar samples, 4.5 percent of the peach nectar samples, and 7.7 percent of the apricot samples had Howard mold counts of 5 percent or more.

Because of the presence of moderate mold levels in the retail market survey, the agency has recently issued FDA Compliance Policy Guide 7110.31 that establishes a defect action level for mold in apricot, peach, and pear nectars. This Guide authorizes regulatory actions when the average Howard mold count for six or more subsamples is 5 percent or above or if the Howard mold count for any one subsample is 20 percent or above. FDA does not believe that the survey's findings of low levels of insect and rodent filth warrant the establishment of defect action levels for these substances.

Background data supporting the defect action level are on file in the Dockets Management Branch. Requests for single copies of FDA Compliance Policy Guide 7110.31 should reference the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch, Food and Drug Administration (address above).

Interested persons may submit to the Dockets Management Branch, Food and Drug Administration, written comments (preferably four copies and identified with the docket number found in brackets in the heading of this document) regarding this defect action level. Received comments are available for examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 8, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-22321 Filed 7-30-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 81F-0211]

Diamond Shamrock Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that the Diamond Shamrock Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of siloxanes and silicones, dimethyl, methylhydrogen, reaction products with polyethylene-polypropylene glycol monoallyl ether as a component of defoamers used in the manufacture of paper and paperboard.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 1B3563) has been filed by the Diamond Shamrock Corp., P.O. Box 2386 R, Morristown, NJ 07960, proposing to amend § 176.210 (21 CFR 176.210) to provide for the safe use of siloxanes and silicones, dimethyl, methylhydrogen, reaction products with polyethylene-polypropylene glycol monallyl ether (CAS Reg. No. 71965-38-3) as a component of defoamers used in the manufacture of paper and paperboard.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21

CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: July 20, 1981.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81-72013 Filed 7-30-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 81M-0229]

Dow Corning Ophthalmics, Inc.; Premarket Approval of Silsoft™ (ELASTOFILCON A) CONTACT LENS

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the SILSOFT™ (elastofilcon A) Contact Lens, sponsored by Dow Corning Oththalmics, Inc., Midland, MI. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by August 31, 1981.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review 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: Henry Goldstein, Bureau of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On April 28, 1980, Dow Corning Ophthalmics, Inc., Midland, MI, submitted to FDA an application for premarket approval of SILSOFT™ (elastofilcon A) Contact Lens. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On July 13, 1981, FDA approved the application by a letter to the sponsor from the Acting Director of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), soft contact lenses and solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), soft contact lenses and solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of Part 310 (21 CFR Part 310), Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of an approved contact lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses. However, the restrictive labeling needs to be updated periodically to refer to new lens solutions that FDA approves for use with approved contact lens. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41-58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93-637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens, under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at any other time FDA prescribes by letter to the sponsor.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 31, 1981, file with the Dockets Management Branch (address above), four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 24, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-22161 Filed 7-30-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80F-0231]

Ginseng Products, Ltd.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the withdrawal without prejudice of the petition (FAP 0A3494) proposing that the food additive regulations be amended to provide for the use of powdered extract of ginseng for regular human consumption.

FOR FURTHER INFORMATION CONTACT: John L. Herrman, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b))), the following notice is issued:

In accordance with § 171.7 *Withdrawal of petition without prejudice* of the procedural food additive regulations (21 CFR 171.7), Bass, Ullman & Lustigman, 747 Third Ave., New York, NY 10017, on behalf of Ginseng Products, Ltd., Switzerland, has withdrawn its petition (FAP 0A3494), notice of which was published in the **Federal Register** of June 27, 1980 (45 FR 43474), proposing that the food additive regulations be amended to provide for the safe use of powdered extract of ginseng for regular human consumption.

Dated: July 20, 1981.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81–22014 Filed 7–30–81; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 80D–0286]

Polychlorinated Biphenyl (PCB) Residues; Action Level in Red-Meat Animals; Availability of Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of FDA Compliance Policy Guide 7111.02 establishing an action level of 3 parts per million (ppm) (fat basis) for unavoidable residues of polychlorinated biphenyls (PCB's) in red-meat animals (cattle, swine, goats, sheep, and horses). The U.S. Department of Agriculture (USDA) had requested that FDA establish a tolerance or action level for unavoidable residues of PCB's in red meat.

ADDRESSES: Written comments on the action level and requests for single copies of FDA Compliance Policy Guide 7111.02 should be submitted to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

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

SUPPLMENTARY INFORMATION: PCB's are persistent and ubiquitous environmental contaminants. One of the results of PCB contamination of the environment has been the occurrence of unavoidable contamination of certain food products.

FDA has in the past issued regulations under Part 109 (21 CFR Part 109) to limit PCB contamination of animal feeds, foods, and food-packaging materials (**Federal Register** of July 6, 1973 (38 FR 18096)).

Consistent with FDA policy, the agency reviewed the current PCB tolerances established in the 1973 regulations and determined that the tolerance for PCB's in certain foods should be reduced. Therefore, in the **Federal Register** of June 29, 1979 (44 FR 38330) FDA published a regulation reducing the tolerance for PCB's in various food commodities including poultry. The tolerance in poultry was reduced from 5 parts per million (ppm) to 3 ppm (fat basis).

One of the factors considered in establishing the 3 ppm level for poultry was the amount of PCB's expected in poultry fat animals consuming feeds containing PCB's at the maximum permitted level of 0.2 ppm.

After publication of the reduced PCB tolerance for poultry, USDA requested that FDA establish a similar tolerance or action level for unavoidable residues of PCB's in red-meat animals to give consistency to its enforcement program.

After review of the USDA request and data concerning the incidence of PCB residues in red meat animals, FDA has decided not to establish a tolerance at this time, because of the low frequency with which PCB residues occur in red meat and because of the lack of precise data that accurately correlate the PCB levels in animal feed to the PCB levels in red-meat tissue. However until more data are developed and become available, FDA has established an action level for unavoidable PCB's in red meat at 3 ppm (fat basis).

FDA has established this action level to provide consistency among the policies of USDA and various State agencies in regulating PCB residue levels in red meat. FDA has no reason to expect that red-meat animals consuming feed contaminated with PCB's at or below current tolerance levels will accumulate residues in their fat above 3 ppm.

Because current data show that PCB residues occur only sporadically in red-meat animals, and because USDA data show that the incidence of PCB residues in red meat animals is about the same as that in poultry, FDA does not believe that the establishment of the 3 ppm action level will result in any increase in current dietary exposures to PCB's, nor result in any adverse impact in the supply of red meat. Therefore, taking into account that PCB's in red meat cannot be completely avoided by good manufacturing practice, FDA considers a 3 ppm level for unavoidable residues of PCB in red meat to be adequate to protect the public health.

The scientific and other data relevant to the establishsment of this action level, which includes a survey of various food categories for PCB residues, are on file in the Dockets Management Branch under the docket number set forth above. Scientific and other data demonstrating the toxic and other effects of PCB contamination are on file in the Dockets Management Branch under Docket No. 80N–0128. Requests for single copies of FDA Compliance Policy Guide 7111.02 should reference the docket number found in brackets in the heading of this document and should be submitted in writing to the Dockets Management Branch, Food and Drug Administration (address above).

Interested persons may submit to the Dockets Management Branch, Food and Drug Administration, written comments (preferably four copies and identified with the docket number found in brackets in the heading of this document) regarding this action level. Received comments are available for examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 8, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–22325 Filed 7–30–81; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 78P–0143]

Tomato Juice Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the amendment and extension of a temporary permit issued to the Cliffstar Corp. to market test tomato juice from concentrate. This action enables the Cliffstar Corp. to improve the quality of information to be derived from the market test by increasing the number of container sizes available to the consumer and expanding the areas of distribution.

DATES: This amended permit is effective on July 31, 1981, and shall terminate either on the effective date of an

affirmative order ruling on the FDA proposal to amend the identity standard for tomato juice, which was published in the **Federal Register** of May 9, 1978 (43 FR 19864), or 30 days after a negative order ruling on the proposal, whichever the case may be.

FOR FURTHER INFORMATION CONTACT:
F. Leo Kauffman, Bureau of Foods (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: A temporary permit was issued to the Cliffstar Corp. under § 130.17 (21 CFR 130.17) concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of the issuance of the permit was published in the **Federal Register** of March 16, 1979 (44 FR 16040). The permit covered limited interstate marketing tests of tomato juice from concentrate that deviated from the standard of identity prescribed for tomato juice under § 156.145 (21 CFR 156.145). The finished product contains not less than 5.5 percent by weight of tomato soluble solids, which is equivalent to a single-strength tomato juice normally found in the marketplace. The existing permit provided for the temporary marketing of a total of 100,000 cases of twelve 46-ounce cans and twelve 32-ounce bottles to be distributed in the States of Connecticut, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Rhode Island.

The Cliffstar Corp. now has requested that its existing temporary permit be extended and amended by expanding the areas of distribution and increasing the number of container sizes available to the consumer. The company has requested that its temporary permit be extended for the duration of the administrative proceedings pertaining to the proposal to amend the standard of identity for tomato juice published in the **Federal Register** of May 9, 1978 (43 FR 19846). The proposed amendment to the standard of identity would, among other things, (1) permit the use of concentrated tomato juice to prepare a single-strength tomato juice product, (2) require the name "tomato juice from concentrate" when concentrated tomato juice is used in the preparation of the canned juice, (3) establish in the identity standard a minimum tomato soluble solids requirement of 5.5 percent, by weight, for the product made from concentrate, and (4) require label declaration of all optional ingredients.

FDA concludes that it will be in the interest of consumers to extend the time period of the temporary permit to allow market testing of 10,000 cases of six 64-ounce glass bottles of the product per month in the State of Florida and 10,000 cases of twelve 46-ounce cans and 10,000 cases of twelve 32-ounce glass bottles of the product per month in the States of Connecticut, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Rhode Island.

Under § 130.17, all interested persons may participate in the market test under the conditions that apply to the Cliffstar Corp., including the labeling requirements and the amounts to be distributed. The designated areas of distribution do not apply to such interested persons. Any interested person who elects to participate in the extended market test shall notify FDA in writing of that fact, the amount to be distributed, and the area of distribution, and shall submit, along with this notification, the labeling under which the food is to be distributed.

This permit extension, as issued to the Cliffstar Corp. and such others who participate in accordance with the provisions set forth in this notice, is effective on July 31, 1981, and expires either on the effective date of an affirmative order ruling on the FDA proposal of May 9, 1978, or 30 days after a negative order ruling on the proposal, whichever the case may be.

Dated: July 28, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-22426 Filed 7-29-81; 11:05 am]

BILLING CODE 4110-03-M

Public Health Service

Newly Qualified Health Maintenance Organizations; May

AGENCY: Public Health Service, HHS.

ACTION: Notice, May—qualified health maintenance organizations.

SUMMARY: This notice sets forth the names, addresses, service areas, and dates of qualification of entities determined by the Secretary to be qualified health maintenance organizations (HMOs). In addition, a name change of a previously qualified HMO is reported at the end of the list.

FOR FURTHER INFORMATION CONTACT:
Frank H. Seubold, Ph.D., Acting Director, Office of Health Maintenance Organizations, Park Building, Third Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443–4106.

SUPPLEMENTARY INFORMATION:
Regulations issued under Title XIII of the Public Health Service Act, as amended, (42 CFR 110.605(b)) require that a list and description of all newly qualified HMOs be published on a monthly basis in the **Federal Register**. The following entities have been determined to be qualified HMOs under Section 1310(d) of the Public Health Service Act (42 U.S.C. 300e–9(d)):

Qualified Health Maintenance Organizations

Name, Address, Service Area, and Date of Qualification

(Operational Qualified Health Maintenance Organizations: 42 CFR 110.603(a))

1. Prudential Health Care Plan, Inc., 1000 Circle 75 Parkway, Suite 640, Atlanta, Georgia 30339. (A regional component of Prudential Health Care Plan, Houston, Texas 77001—see 45 FR 13899–900). Service area: Cobb, Fulton, DeKalb, and Gwinnett Counties, Georgia. Date of qualification: May 1, 1981. (Achieved preoperational qualification on April 1, 1981.)

2. INA Healthplan of Tucson, Inc., (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 5100 E. Grant Road, Tucson, Arizona 85712. Service area: Pima County east of the Papago Indian Reservation, Arizona. Date of qualification: May 5, 1981.

3. Arapahoe Medical Services, Inc., (Individual Practice Association Model, see Section 1310(B)(2)(A) of the Public Health Service Act), P.O. Box 340, Englewood, Colorado 80151. Service area: South area of metropolitan Denver, consisting of southern Denver and Jefferson Counties, western Arapahoe and Douglas Counties, 1st Avenue on the north, Gun Club Road on the east, Jefferson County on the west, and the southernmost boundary of Douglas County, Colorado. Date of qualification: May 7, 1981.

4. Prudential Health Care Plan of Oklahoma, Inc., (Medical Group Model, see Section 1310(b)(1) of the Public Health Service Act), 3330 NW 56th Street, Oklahoma City, Oklahoma 73112. Service area: Oklahoma County, Oklahoma and incorporated areas of Oklahoma City, Moore, Mustang, and Yukon. Date of qualification: May 19, 1981.

5. Island Care, (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 3420–B Kuhio Highway,

Lihue, Kauai, Hawaii 96766. Service area: Island of Kauai, Hawaii. Date of qualification: May 29, 1981.

6. Michigan HMO Plans, Inc., (Individual Practice Association Model, see Section 1310(B)(2)(A) of the Public Health Service Act), 660 Plaza Drive, Suite 2200, Detroit, Michigan 48226. Service area: Wayne County, Michigan and zip codes in Oakland and Macomb Counties as follows:

Oakland: 48008–11, 48013, 48017, 48024–5, 48030, 48053, 48055, 48057–8, 48063, 48067, 48069–73, 48075–6, 48084, 48220, 48237

Macomb: 48015, 48021, 48026, 48066, 48080–2, 48089, 48091–3

Date of qualification: April 13, 1981. (Achieved transitional qualification on April 13, 1978.)

7. Michael Reese Health Plan, Inc., 3055 South Cottage Grove Avenue, Chicago, Illinois 60616. Service area: City of Chicago and Cook and Du Page Counties, Illinois, except the following zip codes in these counties: 60067, 60103, 60108, 60172, 60184–5, 60190, 60411, 60425, 60429, 60438, 60443, 60461, 60466, 60471, 60473, 60476, 60519, 60532, and 60555.

Date of qualification: April 17, 1981. (Achieved transitional qualification on April 17, 1978.)

Name Change

Change from: Compcare, Inc., 6061 Northwest Expressway, Suite 470, San Antonio, Texas 78201.

Change to: Good Health Plus, Inc.

Effective date: April 28, 1981.

Files containing detailed information regarding qualified HMOs will be available for public inspection between the hours of 8:00 a.m. and 4:30 p.m. on Tuesdays and Thursdays, except for Federal holidays, in the Office of Health Maintenance Organizations, Office of the Assistant Secretary for Health, Department of Health and Human Services, Park Building, 3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857.

Questions about the qualification review process or requests for information about qualified HMOs should be sent to the same office.

Dated: July 21, 1981.

Frank H. Seubold,

Acting Director, Office of Health Maintenance Organizations.

[FR Doc. 81-22345 Filed 7-30-81; 8:45 am]

BILLING CODE 4110-85-M

Bureau of Land Management

Alaska Native Claim Selections Shee Atika, Inc.

Correction

In FR Doc. 81–20132 appearing at page 35555, in the issue of Thursday July 9, 1981 make the following correction:

(1) In the first column under the heading "Copper River Meridian, Alaska" line 5, sec. 27 the last "¼" should be corrected to read "½".

(2) In line 9 under the same heading, sec. 33, the last "½" should be corrected to read "¼".

(3) In column two line 32, sec. 13, "S½NE½" should be corrected to read "S½NE¼".

(4) In column two the next to the last line, sec. 31, the first "W½" should be deleted.

BILLING CODE 1505-01-M

Office of the Secretary

Proposed 5-Year OCS Oil and Gas Leasing Program

AGENCY: Office of Outer Continental Shelf Program Coordination.

ACTION: Publication of Proposed 5-Year OCS Oil and Gas Leasing Program.

SUMMARY: Section 18 of the OCS Lands Act, as amended, ("the Act") requires that when the Secretary decides to reapprove the 5-year OCS Oil and Gas Leasing Program, a new proposed 5-year OCS Oil and Gas Leasing Program must be prepared and published in the **Federal Register.** The Act also requires that the proposed leasing program be submitted to the Congress, the Attorney General and the Governors of affected States. The leasing program is to consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing and location of leasing activity which the Secretary of the Interior determines will best meet national energy needs for the 5-year period following its approval. A proposed 5-year leasing program has been developed covering the period January 1982 through December 1986. This proposed program would replace the 5-year program issued in June 1980 which covered the period June 1980 through June 1985.The proposed program was submitted to Congress on July 24, 1981, and included information on size, timing and location of proposed offerings of offshore oil and gas leases, including a proposed schedule and maps; estimates of appropriations and staff needed for the proposed 5-year program; a discussion of fair market value; and copies of certain correspondence between Secretary Watt and Governors of affected States, as required by section 18(c)(2) of the Act. The proposed program was submitted to the Governors of affected coastal States on July 24, 1981. The submission to the Governors also contained information on the size, timing and location of proposed offerings of offshore oil and gas leases, including a proposed schedule and maps; estimates of appropriations and staff needed for the proposed 5-year program; and responses to correspondence received from Governors on the draft proposed program. On July 24, 1981, the proposed program and other material included in the submission to Congress were submitted to the Attorney General.

The July 24, 1981, letter to the Congress, the 5-year schedule and accompanying maps showing the boundaries of proposed planning areas appear in the **Federal Register** today. Single copies of the materials submitted to Congress may be acquired by written request. Interested parties may submit written comments on the proposed program until October 22, 1981.

ADDRESSES: Send comments on the proposed program and requests for the material sent to the Congress to: Director, Office of OCS Program Coordination, Department of the Interior, Room 5150, 18th and C Streets, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Carolita Kallaur or Jan Thorman, Office of OCS Program Coordination, Department of the Interior, Room 5150, 18th and C Streets, N.W., Washington, D.C. 20240, telephone 202/343–9314 or 343–9311.

SUPPLEMENTARY INFORMATION: Comments received on the proposed leasing program will be considered by the Department of the Interior prior to the transmittal of the proposed final leasing program to Congress and the President. This transmittal will be in accordance with section 18(d)(2) of the OCS Lands Act, as amended.

Dated: July 28, 1981.

Alan D. Powers,

Director, Office of OCS Program Coordination.

July 2, 1981.

Hon. George Bush,

President of the Senate, Washington, D.C.

Dear Mr. President: Section 18 of the OCS Lands Act, as amended, requires the preparation, annual review, periodic revision,

and maintenance of a 5-year oil and gas leasing program for the U.S. Outer Continental Shelf. We completed the required annual review of the June 1980 5-year program in February 1981 and determined that significant changes were needed. We believe that the June 1980 schedule falls short of making a proper contribution to our national energy effort. Much of America's untapped hydrocarbon resources are thought to lie offshore, particularly in frontier areas which have never been explored. To help reduce our dependence on foreign oil and aid our economic recovery, we must facilitate exploration and development by making high quality acreage available early and frequently. This is the primary reason for our proposed changes to the existing 5-year program.

Two important aspects of the proposed program are its emphasis on leasing in high potential areas and its provision for studying the possible offering for lease all tracts within a planning area. Both are designed to accelerate the inventorying or our domestic oil and gas resources and to lead to earlier production if discoveries are made.

In terms of national energy objectives, the advantages of leasing in high potential areas are clear. If domestic resources are to be identified and produced, lease offerings should occur in those areas where oil and gas are most likely to be found and interest in leasing is highest.

Significant domestic energy supplies are believed to be located on the OCS. However, the precise quantities and locations of oil and gas are unknown because promising frontier areas have not been explored adequately. In addition, geologist have different views on the probable location of oil and gas in any one planning area. Removing the constraints implicit in the current system, where the Government makes judgments about what is or is not likely to be bid on, should allow companies to concentrate their efforts on tracts they consider most promising. This should lead to earlier information about the gas and oil resources of an area, and earlier production if they are found.

Identical Letter Sent to Speaker Thomas O'Neill

According to the statute, reapproval of the program must be handled in the same manner as development of the initial program. The statute requires us to submit a proposed leasing program to the Congress, the Attorney General, and the Governors of the affected States.

Section 18(a) of the Act establishes the content of the leasing program. Specifically, it requires that the program consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which we determine will best meet national energy needs for the 5-year period following reapproval of the program. Section 18(b) adds the requirement that the program include certain estimates of appropriations and staff.

Attachment 1 is a schedule showing, by area, the location and timing of the sales in our proposed program which are planned for the period 1982 through 1986. It also includes two maps showing the planning areas where the sales on the proposed program will be considered. Attachment 2 is a discussion of size, timing and location of sales and a list of acreage in each planning area included in the schedule.

Estimates of appropriations and staff for four specific activities as required by section 18(b) are included as Attachment 3. Because the four activities do not cover all the costs of the program, we have added a fifth activity covering the remaining costs so that you and others can see the estimated total costs of this proposed program over the 5-year period.

This letter and the three attachments mentioned above constitute the proposed leasing program as specified in the Act.

Attachment 4 contains copies of certain correspondence between the Governors of affected States and the Department as required by section 18(c)(2) of the Act.

Attachment 5 contains a discussion of the manner in which we plan to assure the receipt of fair market value for OCS leases.

The proposed leasing program makes important changes in the leasing program adopted in June 1980. These changes are, in part, the result of comments and suggestions sent to us in response to a December 1980 general inquiry issued by the Department of the Interior; April 13, 1981, letters to Governors of affected States requesting their comments on a draft proposed program; and an April 17, 1981, **Federal Register** inquiry on proposals to streamline the OCS leasing process.

The 5-year program we are proposing calls for 42 sales. On a regional basis, the proposed schedule calls for 6 sales in the Atlantic, 14 in the Gulf of Mexico, 5 off California, 16 off Alaska, and one reoffering sale. There are no reoffering sales in this schedule after 1982 because we believe they are unnecessary under our proposed streamlined leasing process, which will be fully implemented for sales after 1982.

There are several aspects of the proposed schedule which we would like to emphasize:

—The proposed program provides for an equitable sharing of developmental benefits and environmental risks among regions. All regions with oil and gas potential are being asked to contribute to energy supplies if they can be produced economically and operations can be carried out without undue environmental risk. We believe that with the comprehensive authorities available to the Department to design sale proposals and to control subsequent activities, the excellent environmental record of OCS activities will continue. Further, the environmental risks from offshore oil and gas production are considerably lower than the risks from foreign tankers transporting imported oil, the alternative source of energy which domestic OCS production displaces. Developmental benefits are not confined to the regional gains resulting from production and refining operations. They also extend generally to the ultimate consumer of the hydrocarbons and to the nation as a whole whose real income and national security is enhanced as the result of domestic energy production.

—The location of sale areas with respect to regional and national energy markets has been considered. The Department of Energy (DOE) has advised us that the location of supply regions and the lack of existing transportation facilities should not be viewed as constraints to the OCS leasing process. Only with proven reserves can expenditures for new transportation facilities be made. History has shown that once a significant discovery is made in an area without prior production, transportation networks will be designed to meet the requirements for expeditious production of the discovery.

—We have considered the laws, goals, and policies of affected States, including coastal zone management programs where they are approved. We do not believe that there are any laws, goals, or policies or coastal zone management programs which would preclude the initiation of planning for any sales on the proposed program. There are, certainly, differences of opinion with some States about the size, timing and location of some potential sales, but we believe that the concept of equitable sharing of benefits and risks requires that an evenhanded framework of planning be undertaken. After the planning is completed, we will be in a better position to decide whether the sale should go forward or not, if certain tracts should be eliminated, or if special lease terms and conditions are required to provide extra protection to particular environmental values or resource uses.

—With respect to the sales proposed in the Atlantic after 1984, we have not specified their location between the Atlantic leasing regions, although we expect each sale to be located in only one region. This is because we do not know with any degree of certainty which areas have the highest potential for the discovery of oil and gas. We expect that drilling of leased tracts and tracts soon to be leased may provide important information that will put us in a better position to identify areas to study for lease offering.

A draft supplemental environmental impact statement (DSEIS) has been prepared and was transmitted to the Environmental Protection Agency on June 5, 1981. The DSEIS considers the environmental effects of the draft proposed schedule and is to be used in combintation with the final EIS, completed in January 1980, on the 5-year leasing schedule. We have carefully considered the findings of these documents in reaching a decision on the proposed schedule. Public hearings on the DSEIS will be held in several locations and a final SEIS will be available prior to the decision on a proposed final leasing program.

Our proposed schedule differs in some respects from the draft schedule that we asked the Governors to review in April. Changes have been proposed to allow for: (1) completion of a pre-sale stratigraphic testing program off Alaska; (2) operating conditions off Alaska; (3) three Gulf of Mexico sales annually after 1982 rather than two; (4) deletion of reoffering sales after 1982; (5) deletion of the St. Matthew-Hall area off Alaska in favor of a second Navarin Basin sale, also off Alaska; and (6) sale designation in the two planning areas offshore California.

This newly proposed 5-year program is not yet final. The law requires several more steps before it becomes a final program. Our final decision will further consider the careful balancing of State, regional and national needs, protection of the marine, coastal and

human environment, economic values, and the relative potential for oil and gas resources. We are confident that we can work toward improving both the leasing process and the pace of offerings, without sacrificing environmental or other values. We are a Nation rich in resources and this Administration intends to take a common sense approach to ensuring that these resources work for all the people.

Sincerely,

Donald Paul Hodel,

Acting Secretary.

BILLING CODE 4310-10-M

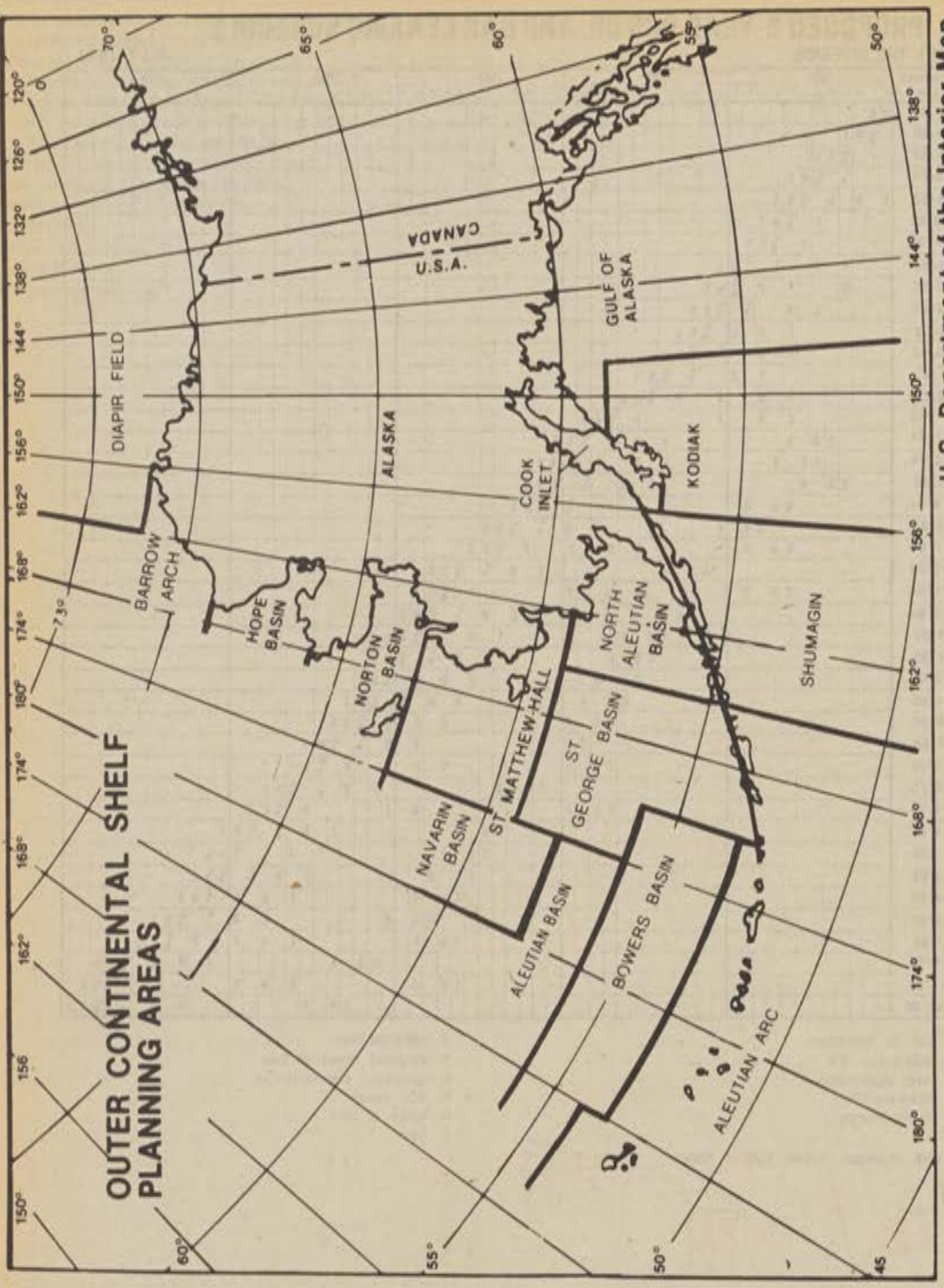
PROPOSED 5-YEAR OCS OIL AND GAS LEASING SCHEDULE

U.S. DEPARTMENT OF THE INTERIOR — **JULY 1981**

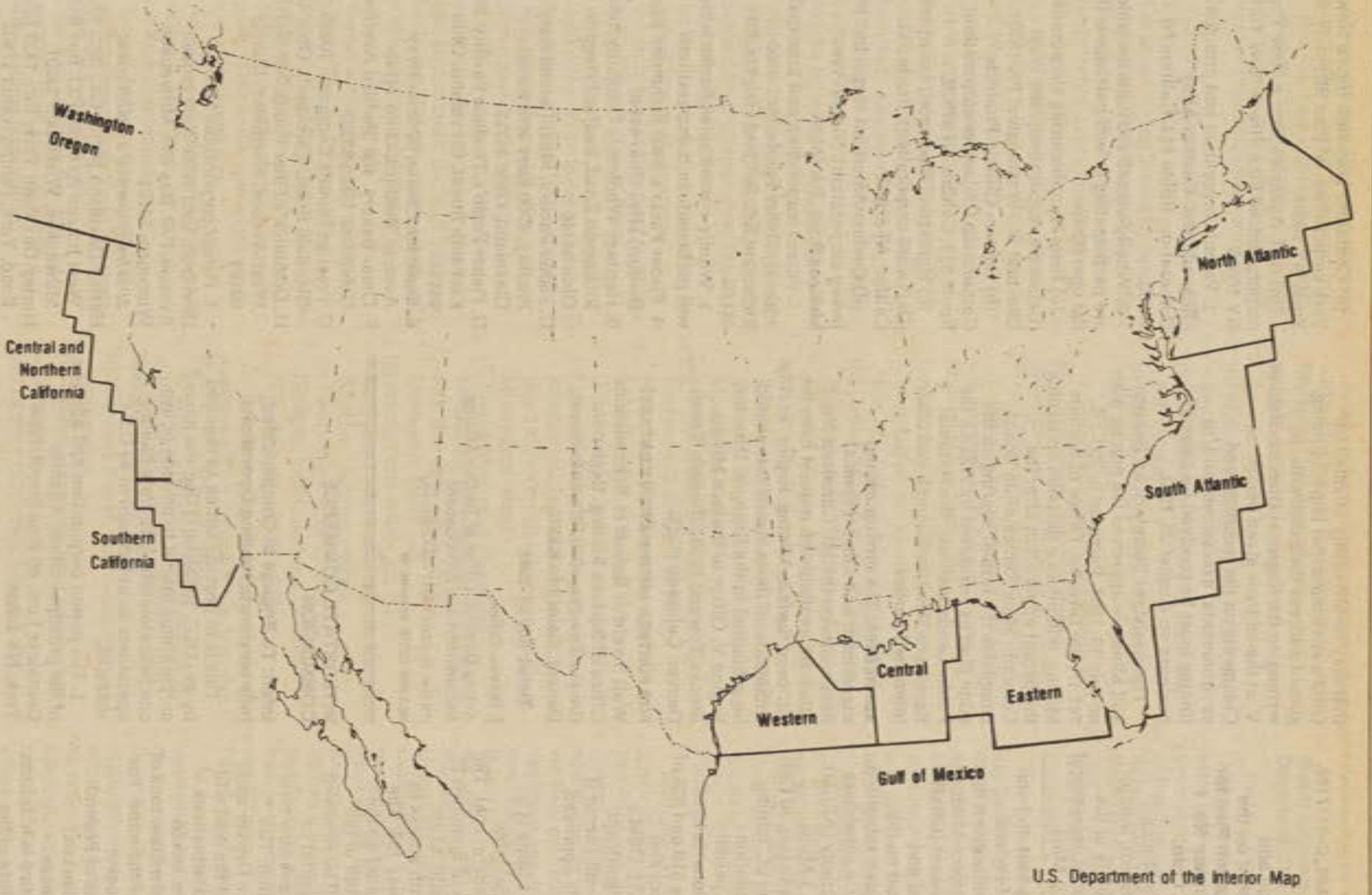
SALE AREA	Proposed Date	1982 J F M A M J J A S O N D	1983 J F M A M J J A S O N D	1984 J F M A M J J A S O N D	1985 J F M A M J J A S O N D	1986 J F M A M J J A S O N D
67 Gulf of Mexico	2/82	N S				
68 S. California	4/82	G N S				
RS-2	6/82	P G N S				
52 North Atlantic	8/82	F P G N S				
71 Diapir Field	9/82	E H F P G N S				
69 Gulf of Mexico	10/82	P G N S				
57 Norton Basin	11/82	F P G N S				
73 C. & N. California	1/83	E H F P G N S				
70 St. George Basin	2/83	H F P G N S				
76 Mid Atlantic	3/83	E H F P G N S				
75 N. Aleutian Basin	4/83	E H F P G N S				
72 C. Gulf of Mexico	5/83	E H F P G N S				
78 So. Atlantic	7/83	E H F P G N S				
74 W. Gulf of Mexico	8/83	E H F P G N S				
79 E. Gulf of Mexico	11/83	E H F P G N S				
80 S. California	1/84	C D A E H F P G N S				
82 N. Atlantic	2/84	C D A E H F P G N S				
83 Navarin Basin	3/84	C D A E H F P G N S				
81 C. Gulf of Mexico	4/84	C D A E H F P G N S				
87 Diapir Field	6/84	C D A E H F P G N S				
84 W. Gulf of Mexico	7/84	C D A E H F P G N S				
88 Norton Basin	10/84	C D A E H F P G N S				
94 E. Gulf of Mexico	11/84	C D A E H F P G N S				
89 St George Basin	12/84	C D A E H F P G N S				
90 Atlantic	1/85	C D A E H F P G N S				
85 Barrow Arch	2/85	C D A E H F P G N S				
91 C. & N. California	3/85	C D A E H F P G N S				
92 N. Aleutian Basin	4/85	C D A E H F P G N S				
98 C. Gulf of Mexico	5/85	C D A E H F P G N S				
86 Hope Basin	7/85	C D A E H F P G N S				
102 W. Gulf of Mexico	8/85	C D A E H F P G N S				
100 S. Alaska*	10/85	C D A E H F P G N S				
103 E. Gulf of Mexico	11/85	C D A E H F P G N S				
95 S. California	1/86	C D A E H F P G N S				
96 Atlantic	2/86	C D A E H F P G N S				
107 Navarin Basin	3/86	C D A E H F P G N S				
104 C. Gulf of Mexico	4/86	C D A E H F P G N S				
97 Diapir Field	6/86	C D A E H F P G N S				
105 W. Gulf of Mexico	7/86	C D A E H F P G N S				
99 Norton Basin	10/86	C D A E H F P G N S				
106 E. Gulf of Mexico	11/86	C D A E H F P G N S				
101 St. George Basin	12/86	C D A E H F P G N S				

C Call for Information
D Information Due
A Area Identification
E NEPA Document
H Public Hearing
F NEPA Document
P Proposed Notice of Sale
G Governors' Comments Due
R DOE Review
N Notice of Sale
S Sale

* Includes Cook Inlet, Shumagin, Kodiak, Gulf of Alaska


OUTER CONTINENTAL SHELF
PLANNING AREAS
U.S. Department of the Interior Map
CANADA
U.S.A.
DIAPIR FIELD
BARROW ARCH
HOPE BASIN
NORTON BASIN
ALASKA
COOK INLET
GULF OF ALASKA
KODIAK
NORTH ALEUTIAN BASIN
SHUMAGIN
ST MATTHEW-HALL
ST GEORGE BASIN
NAVARIN BASIN
ALEUTIAN BASIN
BOWERS BASIN
ALEUTIAN ARC

OUTER CONTINENTAL SHELF PLANNING AREAS



U.S. Department of the Interior Map

[FR Doc. 81-22371 Filed 7-30-81; 8:45 am]
BILLING CODE 4310-10-C

[Federal Lease Nos. D-044659, C-0117192, and C-1362]

Availability of a Technical and Environmental Assessment on the Coal Mining and Reclamation Plan for Arco Coal Co.'s Mt. Gunnison No. 1 Mine, Gunnison County, Colo.

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

ACTION: Notice of availability of the technical and environmental assessment for the Mt. Gunnison No. 1 Mine.

SUMMARY: Pursuant to §§ 1501.4(c) and 1506.6 of Title 40, Code of Federal Regulations, notice is hereby given that the Region V Office of Surface Mining Reclamation and Enforcement (OSM) has completed a technical and Environmental Assessment on the mining and reclamation plan submitted by ARCO Coal Company, a subsidiary of Atlantic Richfield Company (ARCO), for the Mt. Gunnison No. 1 Mine, Gunnison County, Colorado (see 30 CFR 741.12(b) for the definition of "mining plan"). OSM's recommendation, approval of the plan and permit application with stipulations, is in accordance with Sections 510 and 523 of the Surface Mining Control and Reclamation Act (SMCRA). OSM's analysis shows that no significant environmental impacts would occur if the applicant's proposal is approved with stipulations.

The Mt. Gunnison No. 1 Mine is a proposed underground coal mine intended to operate on Federal coal. The site is located 1 mile east of Somerset in Gunnison County, Colorado, at an elevation of 6,450 feet, with access to the site from State Highway 133. The portal entries will be located on the south side of the North Fork of the Gunnison River. Coal will be removed via conveyor belts from portal to breaker to silo, thence across the river to a railroad loadout station. The railroad is a branch of the Denver and Rio Grande Western, and the coal will be shipped to unknown destinations.

The proposed operation would recover approximately 59 million tons of coal over a 40-year life-of-the-mine. The mining operation would cover approximately 7,352 acres of Federal lease and 6,950 acres of fee coal adjacent to the Federal lease.

The purpose of this notice is to inform the public of the availability of the Technical and Environmental Assessment and that the Regional Director, Region V, OSM, has made a "Finding of No Significant Impact" with respect to the Department's proposed action. Any person having an interest that may be adversely affected by OSM's environmental impact finding, should address their concerns, in writing, to the Regional Director, Region V, at the address given below. Comments on the technical and environmental assessment and/or finding must be received by close of business on August 26, 1981.

The Assistant Secretary for Energy and Minerals approved the mining plan on July 15, 1981. Pursuant to 30 CFR 741.17, the Director, Office of Surface Mining, will make a decision on issuing the permit application after the Colorado Mine Reclamation Board completes the formal hearing on the mine plan as requested by ARCO, the Public Lands Institute, the National Resources Defense Council, and other interested parties.

ADDRESSES: The environmental assessment and other technical documents on the Mt. Gunnison No. 1 Mine are available on request from the Office of Surface Mining, Region V. Any comments on these documents should be submitted to the Regional Director, Region V, Office of Surface Mining, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Walt Swain or Robert H. Schueneman, Office of Surface Mining, Region V, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado 80202.

Dated: July 24, 1981.

J. Steven Griles,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 81-22315 Filed 7-30-81; 8:45 am]

BILLING CODE 4310-05-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 and address of the principal office: Atlantic Container Line, 80 Pine Street, New York, NY 10005.

2. Wholly-owned subsidiaries which will participate in the operations and State of Incorporation:

(i) Atlantic Coast Express, Inc., a New Jersey corporation, 2170 North Fleet Street, Elizabeth, N.J. 07201.

(ii) Container Logistics, Inc., a New York corporation, 80 Pine Street, New York, NY 10005.

(iii) ACL Agencies, Inc., a New York corporation, 80 Pine Street, New York, NY 10005.

1. Parent corporation and principal office address: Custom Alloy Corporation, Route 513, Califon, NJ 07830.

2. Wholly-owned subsidiaries which are participating or will participate in the operations:

(a) Penn Manufacturing Corporation (Delaware corporation), 380 West Chestnut St., Washington, PA 15301.

(b) Custom Oilfield Products Corporation (Delaware corporation), Route 513, Califon, NJ 07830.

(c) Hunterdon Transport, Incorporated (Delaware corporation), Route 513, Califon, NJ 07830.

(d) Custom American Forge, Inc. (New Jersey corporation), Nichol Ave., McKees Rock, PA 15136.

1. Parent corporation and principal address: Fisher Foods, Inc., 5300 Richmond Rd., Bedford Heights, OH 44146.

2. Wholly-owned subsidiaries which will participate in the operations:

A. Fisher Fazio's, 5300 Richmond Road, Bedford Hts., Ohio 44146
B. Heritage Wholesale Company, 5300 Richmond Road, Bedford Heights, Ohio 44146
C. Fisher Fazio's, Meat Commissary Facility, 2700 East 40th Street, Cleveland, Ohio 44115
D. Fisher Fazio's, Produce Facility, 2735 East 40th Street, Cleveland, Ohio 44115
E. Eagle Ice Cream, 90 Broadway Avenue, Bedford, Ohio 44146
F. Omar Bakery, 408 Shelden Avenue, Columbus, Ohio 43207
G. Prestige Donuts Company, 10633 Glendale Road, Cincinnati, Ohio 45246
H. Dominick's Finer Foods, 555 North West Avenue, Northlake, Illinois 60164

1. *Parent corporation:* Harley-Davidson, Inc., 3700 West Juneau Avenue, P.O. Box 653, Milwaukee, Wisconsin 53201.

2. *Wholly-owned subsidiaries:*

Harley-Davidson Motor Co., Inc., 3700 West Juneau Avenue, P.O. Box 653, Milwaukee, Wisconsin 53201
Harley-Davidson York, Inc., 1425 Eden Road, York, Pennsylvania 17402
Harley-Davidson Transportation Co., Inc., 1425 Eden Road, York, Pennsylvania 17402
Harley-Davidson International Sales Corporation, 689 Hipe Street, Stamford, Connecticut 06907

1. Parent corporation and address of principal office: Justin Industries, Inc., P.O. Box 425, Fort Worth, Texas 76101.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Acme Brick Company, P.O. Box 425, Fort Worth, Texas 76101
(b) Ceramic Cooling Tower Company, P.O. Box 425, Fort Worth, Texas 76101
(c) Dixie Brick, Inc., P.O. Box 969, Natchitoches, Louisiana 71457
(d) Featherlite Precast Corporation, P.O. Box 425, Fort Worth, Texas 76101
(e) H. J. Justin & Sons, Inc., P.O. Box 548, Fort Worth, Texas 76101
(f) Justin Belt Company, P.O. Box 548, Fort Worth, Texas 76101
(g) Justin Leathergoods Company, P.O. Box 548, Fort Worth, Texas 76101
(h) Louisiana Concrete Products, Inc., 4747 Choctaw Drive, Baton Rouge, Louisiana 70921
(i) Nocona Boot Company, P.O. Box 599, Nocona, Texas 76255
(j) Northland Publishing Company, Inc., P.O. Box N, Flagstaff, Arizona 86002
(k) Sanford Brick Corporation, Drawer 458, Sanford, N.C. 27330
(l) The Featherlite Corporation, P.O. Box 425, Fort Worth, Texas 76101
(m) Volcanic Cinder Company, P.O. Box 425, Fort Worth, Texas, 76101

1. Parent corporation and address of principal office: Katy Industries, Inc., 853 Dundee Avenue, Elgin, Illinois 60120.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation: Bee Gee Shrimp, Inc., a Delaware corporation, Mariner Distributors, Inc. and Sahlman Seafoods, Inc., Florida corporations, all three of which are qualified to do business in Florida.

1. Parent corporation and address of principal office: M. Lowenstein Corporation, 1430 Broadway, New York, NY 10018, a New York corporation.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Lowenstein International Corp., 1430 Broadway, New York, NY 10018, a New York corporation
(ii) Olympic Textile International, Inc., 1430 Broadway, New York, NY 10018, a New York corporation
(iii) Catawba Trucking Co., Inc., P.O. Box 10352, Rock Hill, SC 29730, a South Carolina corporation
(iv) Lowenstein Cotton & Storage Corp., Anderson, SC 29621, a South Carolina corporation

1. Parent corporation and address of principal office: McCain Foods, Limited, Florenceville, New Brunswick, Canada.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) McCain Foods, Inc.—Washburn, Maine
(ii) McCain Transport, Inc.—Easton, Maine
(iii) McCain Fertilizer—Florenceville, NB, Canada
(iv) Thomas Equipment—Centreville, NB, Canada

1. Parent corporation and address of principal office: National Presto Industries, Inc., 3925 North Hastings Way, Eau Claire, Wisconsin 54701.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(a) Canton Sales & Storage Company, Mississippi, 355 Matthews Drive, P.O. Box 529, Canton, Mississippi 39046
(b) Canton Manufacturing Company, Mississippi, 555 Matthews Drive, P.O. Box 305, Canton, Mississippi 39046
(c) Presto Manufacturing Company, Mississippi, Highway 51 North, P.O. Box 10057 Northside Station, Jackson, Mississippi 39206
(d) Presto Products Manufacturing Company, a division of Presto Manufacturing Company, 1301 LaVelle Road, P.O. Box 578, Alamogordo, New Mexico 88310
(e) Jackson Sales & Storage Company, Mississippi, Highway 51 North, P.O. Box 10085 Northside Station, Jackson, Mississippi 39206
(f) World Aerospace Company, Minnesota, 2611 Second Street North, P.O. Box 1049, Minneapolis, Minnesota 55440
(g) Presto Parts & Service, Inc., California, 2300 South Broadway, Los Angeles, California 90007
(h) Presto Parts & Service Corp., Georgia, 3595 Clearview Parkway N.E., Atlanta, Georgia 30340

1. Parent corporation and address of principal office: Springs Mills, Inc., P.O. Box 70, Fort Mill, SC 29715.

2. Wholly-owned subsidiaries which will participate in the opeations, and State(s) of incorporation:

(i) Seabrook Foods, Inc., a Georgia corporation
(ii) Graber Industries, Inc., a Delaware corporation
(iii) Lawtex Industries, Inc., a Georgia corporation

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-22329 Filed 7-30-81: 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP1-212]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided: July 24, 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 quality of the human environmental 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 (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 inquiries to the Ombudsman's Office, (202) 275-7326.

MC 2060 (Sub-15), filed July 15, 1981. Applicant: PINE HILL-KINGSTON BUS CORP., 411 Washington Ave., P.O. Box 1758, Kingston, NY 12401. Representative: Lawrence E. Lindeman, 1032 Pennsylvania Bldg., Pennsylvania Ave. and 13th Street NW., Washington, DC 20004 (202) 628-4600. Transporting *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, between Kingston, NY and New York, NY, from Kingston over Interstate Hwy 87 to NY Hwy 17 (also from Kingston over NY Hwy 32 to New Paltz, then over NY Hwy 299 to junction Interstate Hwy 87), then over NY Hwy 17 to NJ Hwy 17, then over NJ Hwy 17 to NJ Hwy 3, then over NJ Hwy 3 to Interstate Hwy 495 (also from junction Interstate Hwy 87 and NY Hwy 17 over Interstate Hwy 87 to the Garden State Parkway, then over the Garden State Parkway to Interstate Hwy 80, then over Interstate Hwy 80 to Interstate Hwy 95, then over Interstate Hwy 95 to Interstate Hwy 495), then over Interstate Hwy 495 and the Lincoln Tunnel to New York, NY , and return over the same route, serving all intermediate points, restricted against the transportation of passengers and express whose entire journey begins at New York, NY and ends at any point in New Jersey, or vice versa.

MC 75840 (Sub-170), filed July 15, 1981. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, Birmingham, AL 35202. Representative: Guy H. Postell, Suite 713, 3384 Peachtree Road, NE., Atlanta, GA 30326, (404) 237-6472. Transporting *chemicals and related products*, between points in Bradley and Hamilton Counties, TN, on the one hand, and, on the other, points in TX.

MC 110761 (Sub-18), filed July 9, 1981. Applicant: CARROLL TRANSPORT, INC., 1702 Frick Bldg., Pittsburgh, PA 15219. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219, (412) 471-1800. Transporting *lumber and wood products*, between points in Wayne County, MI, on the one hand, and, on the other, points in IN, MD, NY, OH, PA, and VA.

MC 120380 (Sub-5), filed July 13, 1981. Applicant: GARVEY TRANSPORT, INC., 2 Water St., Holbrook, MA 02343. Representative: James F. Martin, Jr., 8 West Morse Rd., Bellingham, MA 02019, (617) 966-2093. Transporting *general commodities* (except classes A and B explosives) between points in CT, ME, MA, NH, RI, and VT.

MC 126091 (Sub-12), filed July 10, 1981. Applicant: FRALEY & SCHILLING, INC., R.R. 1, Rushville, IN 46173. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846-6655. Transporting *metal products*, between Steubenville, OH, on the one hand, and, on the other, points in KY, IL, IN, NY, MD, PA, VA, WV, NC, and SC.

MC 134730 (Sub-31), filed July 7, 1981. Applicant: METALS TRANSPORT, INC., 528 South 108th St., West Allis, WI 53214. Representative: M. H. Dawes (same address as applicant), (414) 258-9998. Transporting *metal products, and waste or scrap materials not identified by industry producing*, between Milwaukee, WI, and Chicago, IL.

MC 143061 (Sub-20), filed July 16, 1981. Applicant: ELECTRIC TRANSPORT, INC., P.O. Box 528, Eden, NC 27288. Representative: Archie W. Andrews (same address as applicant), (919) 623-9107. Transporting *such commodities* as are dealt in or used by manufacturers of electronic equipment, between points in the U.S.

MC 143410 (Sub-1), filed July 20, 1981. Applicant: ELMER TIESLER, d.b.a., TIESLER TRUCKING CO., 108 E. Front St., Box 341, Fulda, MN 56131. Representative: Robert D. Gisvold, 1600 TCF Tower, Minneapolis, MN 55402, (612) 333-1341. Transporting *food and related products*, between St. Louis, MO, on the one hand, and, on the other, points in Nobles County, MN.

MC 146601 (Sub-9), filed July 13, 1981. Applicant: POTEAT MOTOR LINES, INC., P.O. Box 2030, Hickory, NC 28601. Representative: Robert D. Hoagland, 1204 Cameron Brown Bldg., 301 S. McDowell St., Charlotte, NC 28204, (704) 333-8801. Transporting *general commodities* (except classes A and B explosives), between Manchester, NH, and points in CT, DE, MA, MD, NJ, NY, PA, and RI, on the one hand, and, on the other, points in GA, NC, SC, and VA.

MC 147870 (Sub-3), filed July 15, 1981. Applicant: MEMPHIS LEASING CO., INC., 814 Florida Ave., Memphis, TX 38101. Representative: Charles H. White, Jr., Suite 800, 1019 19th Street NW., Washington, DC 20036, (202) 785-3420. Transporting *general commodities* (except classes A and B explosives) between points in AL, AR, KY, LA, MS, TN, those points in TX, on and east of Interstate Hwy 35, and those points in FL, on and west of U.S. Hwy 231.

MC 157100, filed July 10, 1981. Applicant: CHARLES D. AND SHERYL J. HOEKEMA, d.b.a. CHARLIE HOEKEMA TRUCKING, Route 1, Box 20A-1, Manhattan, MT 59741. Representative: Joe Gerbase, 100 Transwestern Bldg., Billings, MT 59101. Transporting *lumber and wood products*, between points in MT, ID, OR, and WA, on the one hand, and, on the other, points in IA, NE, IL, WA, MO, and KS, and (2) *pulp, paper and related products*, between points in Clinton County, IA, on the one hand, and, on the other, points in MT and Park County, WY.

MC 157111, filed July 13, 1981. Applicant: RAY TRUCKING COMPANY, 5150 Tom Murray Ave., Glendale, AZ 85301. Representative: Leo R. Beus, 11 West Monroe, Phoenix, AZ 85003, (602) 262-5853. Transporting *building materials and supplies*, between those points in the U.S., in and west of MN, IA, MO, AR and LA.

MC 157170, filed July 13, 1981. Applicant: VIRGINIA JOYCE WOLF AND OLA JANE GROW, d.b.a. ROADRUNNERS WEST, a partnership, 141 States St., San Francisco, CA 94114. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108, (415) 986-8696. As a *broker*, at San Francisco, CA, in arranging for the transportation of *passengers and their baggage*, in special or charter operations, between points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY, on the one hand, and, on the other, points in the U.S., (including AK, excluding HI).

[FR Doc. 81-22330 Filed 7-30-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: July 28, 1981.

In our decision of July 21, 1981, an 18.0-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 remain at 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, the 2.1-percent surcharge for United Parcel Service or the 6.7-percent surcharge for the bus carriers.

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 31, 1981.

By the Commission, Chairman Taylor, Commissioners Gresham, Clapp, Trantum, and Gilliam. Commissioner Gresham did not participate. Commissioner Gilliam was absent and did not participate.

Agatha L. Mergenovich,

Secretary.

July 27, 1981.

Appendix—*Fuel Surcharge*

Base date and price per gallon (including tax)

January 1, 1979 ..... 63.5¢

Date of current price measurement and price per gallon (including tax)

July 27, 1981 ..... 131.3¢

	Transportation performed by—			
	Owner-operator [1]	Other [2]	Bus carriers	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 traffic.
[3] The percentage surcharge developed for UPS is calculated by applying 81 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. 81-22411 Filed 7-30-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed by Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment not does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: July 28, 1981.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell.

Agatha L. Mergenovich,

Secretary.

MC-F-14667, filed July 14, 1981. YOWELL TRANSPORATION SERVICE, INC. (Yowell) (1840 Cardington Road, Dayton, OH 45409)—PURCHASE (PORTION)—REDWING CARRIERS, INC. (Redwing) (P.O. Box 426, Tampa, FL 33601). Representative: Leonard A. Jaskiewicz, 1730 M Street, NW., Suite 501, Washington, D.C. 20036. Yowell seeks authority to purchase a portion of the interstate operating rights of Redwing. Neil T. Yowell, Jr., majority stockholder of Yowell, seeks authority to acquire control of said rights through the transaction. Yowell is purchasing that portion of Redwing's certificate in No. MC-11105 (Sub-No. 188) which authorizes the transportation, as a motor common carrier of *household goods*, as defined by the Commission (1) between points in AL, GA, TN, NC, SC, VA, FL, LA, MS, AR, KY, OH, MI, WV, MD, PA, NY, NJ, DE, IL, IN, CT, MA, and DC, (2) between points in MA, on the one hand, and, on the other, points in NH, RI, VT, and ME, (3) between points in AL, GA, TN, NC, SC, VA, FL, LA, MS, AR, KY, OH, MI, WV, MD, PA, DE, IL, IN, MA, and DC, on the one hand, and, on the other, points in NH, RI, VT, and ME, and (4) between points in CT and NH, on the

one hand, and, on the other, points in VT, NH, and ME. Yowell is a motor common carrier pursuant to certificates issued in MC–150480 and sub-numbers thereunder.

[FR Doc. 81–22414 Filed 7–30–81; 8:45 am]
BILLING CODE 7035–01–M

[Volume No. 131]

Motor Carriers; Permanent Authority Decisions; Restriction Removal; Decistion-Notice

Decided: July 27, 1981.

The following restriction removal applications, filed after December 28, 1980, was 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 issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Ewing, and Shaffer.

Agatha L. Mergenovich,

Secretary.

FF–336 (Sub-1)X, filed July 21, 1981. Applicant: INTERNATIONAL SERVICES, INC., 1316 Valley Street, Seattle WA 98109. Representative: Alan F. Wohlstetter, 1700 K Street, N.W., Suite 301, Washington, DC 20006. Applicant seeks to remove restrictions in its lead permit to delete the restriction to traffic having its origin or destination at a point outside the 48 conterminous States and DC.

MC 2230 (Sub-19)X, filed April 16, 1981, noticed in the **Federal Register** of April 30, 1981, and republished as follows: Applicant: MACK'S TRANSPORT SERVICE, INC., 1215 North 17th St., P.O. Box 82407, Lincoln, NE 68501. Representative: Eugene C. Ewald, 100 W. Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. As is pertinent here, applicant seeks to broaden its Sub-No. 18 certificate by removing the restriction against the transportation of shipments having an immediately prior movement from the facilities of the Ford Motor Company and General Motors Company. The certificate issued in this proceeding failed to encompass this revision. The purpose of this republication is to reflect applicant's original request and to request comments from interested parties.

MC 22196 (Sub-4)X, filed July 16, 1981. Applicant: ACE WORLD–WIDE MOVING & STORAGE, INC., 2725 Whynaucht Court, S.E., Rochester, MN 55901. Representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, DC 20036. Applicant seeks to remove restrictions in its Sub-No. 2 certificate to broaden the commodity description from household goods to "household goods and furniture and fixtures."

MC 60014 (Sub-211)X, filed July 13, 1981. Applicant: AERO TRUCKING, INC., Box 308, Monroeville, PA 15146. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Applicant seeks to remove restrictions in its Sub-Nos. 113, 152, 180 and 188 certificates to (A) broaden the commodity descriptions to (1) "lumber and wood products," from (a) lumber products and plywood building materials, in Sub-No. 113, and (b) plywood and composition board, in Sub-No. 180, (2) "machinery, metal products and commodities which by reason of size or weight require the use of special equipment" from pollution control equipment and cooling equipment, and parts, materials, equipment and supplies used in the manufacture thereof, in Sub-No. 152, and (3) "metal products and rubber and plastic products" from tank components and tank parts, in Sub-No. 188; (B) broaden facilities or city-wide authority to county-wide authority: (1) Galveston, TX to Galveston County TX, in Sub-No. 113; (2) facilities at Stockbridge, GA and Tulsa, OK to Henry County, GA and Tulsa County, OK, in Sub-No. 152, (3) facilities at Beaumont, Galveston and Houston, TX to Jefferson, Galveston and Harris Counties TX, in Sub-No. 180, and (4) facilities at the Woodlands, TX to Mongtomery County, TX, in Sub-No. 188; (C) remove the "except AK and HI" restriction, in Sub-No. 188; and (D) authorize radial authority to replace existing one-way authority.

MC 108119 (Sub-285)X, filed June 8, 1981, previously noticed in the **Federal Register** of June 26, 1981, republished as corrected this issue. Applicant: E. L. MURPHY TRUCKING COMPANY, 3303 Terminal Drive, P.O. Box 43010, St. Paul, MN 55164. Representative: James L. Nelson, 1241 Pierce Butler Route, St. Paul, MN 55104. Applicant seeks to remove restrictions in its Sub-Nos. 40, 43, 63, 74, 78F, 79F, 88F, 93F, 100F, 107F, 109F, 141F, 143F, 182F, 187F, 191F, 221F, 223F, 232F, 233F, 242F, 259F, 263F, and 265F certificates to (1) eliminate all exceptions in its general commodities authorities except "classes A and B explosives" in Sub-Nos. 40 and 43 (Sheet No. 1); (2) eliminate the restrictions "in containers on in trailers" and "having an immediately prior or subsequent movement by water, or by water-rail or by air" in Sub-No. 40; (3) eliminate the restrictions against service at intermediate points and against the transportation of traffic originating at or destined to Vancouver, WA, on described regular route between Vancouver, WA, and Portland, OR, in Sub-No. 43 (Sheet No. 2); (4) broaden the commodity descriptions from wooden skids, heavy-timbers, wood piling, lumber and wood construction poles, pre-cut buildings, knocked down, pre-cut log buildings, knocked down, and pre-cut log buildings to "lumber and wood products, and building materials" in Sub-Nos. 43 (Sheet No. 3), 63, 74, 78F, 79F, and 93F; from bentonite clay and fiberglass products to "clay, concrete, glass, or stone products" in Sub-Nos. 88F, 191F, and 223F; from lignite coal to "coal" on Sub-No. 88F; from dry hydro-desulphurization catalyst and drilling mud additives to "chemicals and related products" in Sub-Nos. 141F and 223F; from self-propelled vehicles, trailers, mobile home axles and rims, bridge erection boats, electronic maintenance vans, aircraft, aircraft engines, and aerospace craft, materials and equipment used in the maintenance, servicing, operation, and manufacture of aircraft and aerospace craft, and parts, to "transportation equipment" in Sub-Nos. 143F, 182F, 232F, and 242F; from buildings and building components to "buildings and building materials" in Sub-No. 143F; from belt conveyor material handling equipment, topographic support systems, and pumping assemblies to "machinery and metal products" in Sub-Nos. 182F and 232F; from mounted tires, plastic pipe and fittings, and hose line outfits to "rubber and plastic products" in Sub-Nos. 182F and 187F; from fabricated iron

and steel articles and iron and steel articles to "metal products" in Sub-No. 182F; from pipeline equipment and materials and supplies used in the installation and repair of pipeline equipment to "Mercer commodities" in Sub-No. 221F; from knocked down steel buildings and parts to "metal products and building materials" in Sub-No. 259F; from pipe and pipe fittings (except iron and steel pipe) to "rubber and plastic products, and clay, concrete, glass, or stone products" in Sub-No. 263F; and from air or tension support structures to "miscellaneous products of manufacturing" in Sub-No. 265F; (5) remove the bulk restrictions in Sub-Nos. 100F, 141F, 223F and 242F; (6) remove the facilities limitations in Sub-Nos. 74, 88F, 93F, 107F, 143F, 182F, 187F, 191F, 223F, 232F, 259F, and 265F, and replace authority to serve named points to county-wide authority, Rogers County, OK, for Claremore, OK, in Sub-Nos. 63 and 79F; Calhoun and Liberty Counties, FL, for Blountstown, FL, in Sub-No. 74; Surry County, NC, for Elkin, NC, and Henderson and Buncombe Counties, NC, for Fletcher, NC, in Sub-No. 78F; Apache County, AZ, for McNary, AZ, in Sub-No. 93F; Seminole County, OK, for Seminole, OK, in Sub-No. 100F; Benewah County, ID, for Jaype, St. Maries, and Santa, ID, Nez Perce County, ID, for Lewiston and Spalding, ID, Kootenai County, ID, for Post Falls and Coeur d'Alene, ID, and Lewis County, ID, for Kamiah, ID, in Sub-No. 107F; Harris County, TX, for Pasadena, TX, in Sub-No. 141F; Riverside County, CA, for Riverside, CA, and Buncombe County, NC, for Asheville, NC, in Sub-No. 143F; Marion County, AL, for Winfield, AL, Grayson County, TX, for Sherman, TX, Catawba County, NC, for Newton, NC, and Magoffin County, KY, for Saylersville, KY, in Sub-No. 182F; Los Angeles, Orange, and Kern Counties, CA, for Sun Valley, Santa Ana, and Bakerfield, CA, respectively, and Cuyahoga County, OH, for Cleveland, OH, and DeKalb County, GA, for Stone Mountain, GA, in Sub-No. 187F; Salt Lake County, UT, for Salt Lake City, UT, in Sub-No. 191F; Butte and Custer Counties, SD, for Belle Fourche and Custer, SD, respectively, and Weston and Big Horn Counties, WY, for Upton and Lovell, WY, respectively, in Sub-No. 223F; Lyon County, NV, for Carson City, NV, in Sub-No. 259F; Merced County, CA, for Gustine, CA in Sub-No. 263F; and San Mateo County, CA, for Redwood City, CA, in Sub-No. 265F; (7) remove originating at restrictions in Sub-Nos. 187F, 191F, 233F, 263F, and 265F, and originating at or destined to restrictions in Sub-Nos. 97F, 107F, 143F, and 182F; (8) remove AK and HI exceptions in Sub-Nos. 40, 97F, 141F, 143F, 182F, 187F, 191F, 221F, 223F, 232F, 233F, 259F, 263F, and 265F, the HI exception in Sub-No. 242F, the AK, AZ, and HI exception in Sub-No. 93F, the AK, HI, and OK exceptions in Sub-No. 79F, the AK, HI, and WY exceptions in Sub-No. 88F, the FL exception in Sub-No. 74F, and the NC exception in Sub-No. 78F; and (9) authorize radial operations in place of one-way authority in Sub-Nos. 63, 74, 78F, 79F, 88F, 93F, 100F, 107F, 109F, 141F, 187F, 191F, 221F, 223F, 233F, and 265F between various combinations of the above counties and points in U.S. The purpose of this republication is to add Sub-No. 232F to part (6) to remove the facility limitation.

MC 114004 (Sub-176)X, filed March 26, 1981, previously published in the FR of April 16, 1981, republished as follows: Applicant: CHANDLER TRAILER CONVOY, INC., P.O. Box 9410, Little Rock, AR 72219. Representative: Winston G. Chandler (same as above). Applicant seeks to remove restrictions in Sub-Nos. 66, 156, 157, and 174F. This Board previously (1) broadened the commodity descriptions; (2) removed (a) restrictions limiting trailer service to secondary or initial movements, (b) restrictions on building movements, (c) restrictions against service from and to named points (d) exception of facilities and the HI exception and (3) authorized two way movements. Applicant also sought to remove in Sub-No. 66 two territorial exceptions, both smaller than a county. Through an inadvertent error the Board failed to republish this request. Notice is hereby given that applicant seeks to remove the exception reading "except Newport, AR and points within 10 miles thereof and Jacksonville, AR" now appearing in part 1 of the Sub-No. 176X certificate.

MC 117095 (Sub-5)X, filed July 17, 1981. Applicant: MERVIN E. WEAVER, 11 South Tower Rd., New Holland, PA 17557. Representative: Charles E. Creager, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. Applicant seeks to remove restrictions in its lead and Sub-No. 3 certificates to (1) broaden the commodity descriptions from stone and sand in its lead, and agricultural lime, crushed stone, blacktop, and asphaltic concrete mix in its Sub-No. 3 to "commodities in bulk"; (2) broaden city-wide to county-wide authority from East Earl Township to Lancaster County, PA, and Bridgeton to Cumberland County, NJ, in the lead; and (3) replace one-way with radial authority in each certificate.

MC 119349 (Sub-41)X, filed July 21, 1981. Applicant: STARLING TRANSPORT LINES, INC., P.O. Box 2148, Fort Pierce, FL 33450. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh Street, N.W., Washington, DC 20001. Applicant seeks to remove restrictions in its Sub-No. 36F certificate to (1) remove the restriction against the transportation of commodities in bulk, in tank vehicles; (2) broaden the territorial description by replacing a plantsite at Des Plaines, IL, with Chicago, IL, and (3) delete the exception of service to AK and HI.

MC 124073 (Sub-13)X, filed July 16, 1981. Applicant: ROY S. SARGEANT, INC., P.O. Box 95, Vienna, NJ 07880. Representative: Edward F. Bowes and Michael R. Werner, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. Applicant seeks to remove restrictions in its lead and Sub-Nos. 4, 5, 9, 11, and 12F permits to (1) broaden its commodity descriptions from frozen meats, pizza pies, fish (breaded and unbreaded, etc.), canned tomatoes, breading, french-fried potatoes, poultry, etc. * * * to "such commodities as are used in and dealt by food and grocery chain business houses," in all of the above-named authority; and (2) broaden its territorial authority to between points in the United States, under continuing contract(s) with named shippers.

MC 126119 (Sub-9)X, filed July 16, 1981. Applicant: EASTERN MOTOR TRANSPORT, INC., P.O. Box 501, Richmond, VA 23204. Representative: Carroll B. Jackson, 1810 Vincennes Rd., Richmond, VA 23229. Applicant seeks to remove restrictions in its Sub-No. 4F certificate to (1) broaden the commodity description from petroleum products (except asphalt and petro-chemicals) to "petroleum, natural gas, and their products" and (2) authorize radial authority in place of existing one-way authority between Fairfax, VA and points in MD.

MC 135989 (Sub-19)X, filed January 23, 1981, previously published in the **Federal Register** of February 5, 1981, republished as corrected, this issue. Applicant: COAST EXPRESS, INC., 14280 Monte Vista Ave., Chino, CA 91710. Representative: William J. Lippman, Suite 330 Steele Park, 50 S. Steele St., Denver, CO 80209. Applicant seeks to remove restrictions in its lead permit in order to broaden the territorial description to authorize "between points in the United States" under contract(s) with named shippers. The purpose of this republication is to broaden the territorial description in the lead as indicated.

MC 136077 (Sub-31)X, filed July 20, 1981. Applicant: REBER CORPORATION, 2216 Old Arch Road, Norristown, PA 19401. Representative: Richard L. Thurston, One Franklin Plaza, 15th Floor, Philadalphia, PA 19102. Applicant seeks to remove restrictions in its Sub-No. 24F certificate to replace named facilities in York County, PA, with York County, PA.

MC 139312 (Sub-14)X, filed July 13, 1981. Applicant: NORTHEAST TRUCK BROKERS OF TEXAS, INC., 2501 North Cage, P.O. Box 826, Pharr, TX 78577. Representative: Thomas R. Kingsley, 10614 Amherst Avenue, Silver Spring, MD 20902. Applicant seeks to remove restrictions in its Sub-Nos. 1, 2, 5, 6, 8, 9, 10 and 12 certificates to (1) broaden the commodity descriptions (a) in Sub-Nos. 1, 5, 6 and 8 for used clothing, rags, and used burlap to "waste or scrap materials not identified by industry producing and textile mill products," (b) in Sub-No. 2 from iron and steel pipe fittings, including threaded pipe, and in Sub-No. 9 from iron pipe fittings, to "metal products," (c) in Sub-No. 10 from plumbing supplies to "rubber and plastic producers, clay, concrete, glass or stone products, metal products, machinery, and chemicals and related products," and (d) in Sub-No. 12F from floor coverings, accessories for floor coverings, and floor care products, and materials, equipment, and supplies used in the installation of those commodities, to "textile mill products, lumber and wood products, pulp, paper and related products, petroleum and natural gas products, rubber and plastic products, clay, concrete, glass or stone products, machinery, and miscellaneous products of manufacturing"; (2) remove the restriction excepting commodities, the transportation of which (by reason of size or weight) requires the use of special equipment, in Sub-Nos. 2 and 9; (3) remove the restriction limiting transportation to traffic originating at and destined to named facilities or points in Sub-Nos. 2 and 10; (4) remove the exception of service to Bridgeport, CT, in Sub-No. 8, to Social Circle, GA, and Alliance and Salem, OH, in Sub-No. 10, and to AK, HI and TX in Sub-No. 8; (5) expand cities to county-wide authorities, replacing (a) in Sub-No. 1 Bridgeport, CT, with Fairfield County, CT, Nogales, AZ, with Santa Cruz County, AZ, and McAllen, TX, with Hidalgo County, TX, (b) in Sub-No.5 Nogales, AZ, with Santa Cruz County, AZ, and McAllen, TX, with Hidalgo County, TX, (c) in Sub-No. 6 Nogales, AZ, with Santa Cruz County, AZ, and McAllen, TX, with Hidalgo County, TX, (d) in Sub-No. 8 Nogales, AZ, with Santa Cruz County, AZ, McAllen, TX, with Hidalgo County, TX, Brownsville, TX, with Cameron County, TX, Laredo, TX, with Webb County, TX, and El Paso, TX, with El Paso County, TX, (e) in Sub-No. 2 Blossburg, PA, with Tioga County, PA, and Waynesboro, PA, with Franklin County, PA, and (f) in Sub-No. 9 Blossburg, PA, with Tioga County, PA; (6) in Sub-No. 10 replace facilities at Waco, TX with McLennan County, TX; and (7) authorize radial in lieu of one-way service in all Sub-Nos.

MC 142254 (Sub-8)X, filed July 21, 1981. Applicant: FRIEDL FUEL & CARTAGE, INC., 440 West Ann Street, Whitewater, WI 53190. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. Applicant seeks to remove restrictions in its lead and Sub-Nos. 3F, 4, 6F, and 7 certificates to (1) broaden the commodity descriptions from (a) washing, cleaning, buffing, and polishing compounds, to "chemicals and related products" in Sub-No. 3, (Part 3); (b) paper, paper products, printed matter, and materials, equipment, and supplies used in the manufacture and distribution thereof, to "pulp, paper, and related products, and materials, equipment and supplies" in Sub-No. 4; (c) coke and coke breeze to "petroleum and coal products" in Sub-No. 6; (d) pipe, materials, equipment, or supplies used in the manufacture, sale, and distribution thereof, to "metal products, materials, equipment, or supplies" in Sub-No. 7; (2) delete plantsite facilities in the lead, and Sub-Nos. 3, 4, and 6; (3) remove originating at and/or destined to restrictions in the lead, and Sub-Nos. 3 and 4; (4) eliminate the commodity restrictions, such as in bulk, in tank, or hopper vehicles, in dump vehicles, in the lead, and Sub-Nos. 3, 4, and 6; (5) delete the restriction against the transportatin of coke from named counties in MN, in the lead; (6) authorize radial service in lieu of existing one-way authority between the counties named below and various combinations of States in the lead, and Sub-Nos. 3 and 6; and (7) broaden cities to counties: (a) Palmyra and Whitewater, WI, to Jefferson and Walworth Counties, WI, in the lead; (b) Whitewater and Milton, WI, to Walworth and Rock Counties, WI, in Sub-No. 3; (c) Whitewater, WI, to Walworth County, WI, in Sub-No. 4; and (d) East Troy, WI, to Walworth County, WI, in Sub-No. 7.

MC 143638 (Sub-7)X, filed July 20, 1981. Applicant: JOHNSON'S TRUCKING, INC., Route 1, Box 31, Inola, OK 74036. Representative: Michael H. Lennox, 531 N. Portland, P.O. Box 75613, Oklahoma City, OK 73147. Applicant seeks to remove restrictions in its Sub-No. 6F certificate to broaden the commodity description from dry commodities in bulk to "commodities in bulk", in connection with its authority to serve between points in AR, CO, IA, KS, LA, MO, NM, OK and TX.

MC 146293 (Sub-86)X, filed July 20, 1981. Applicant: REGAL TRUCKING CO., INC., P.O. Box 829, Lawrenceville, GA 30246. Representative: Richard M. Tettebaum, P.O. Box 720434, Atlanta, GA 30328. Applicant seeks to remove restrictions in its Sub-No. 34F certificate to (1) broaden the commodity description from carpet strip, molding, staples, tools, nails, adhesives, solvents, stains, and wood preservatives and materials, equipment and supplies to "such commodities as are dealt in or used by manufacturers, distributors, and retailers of hardware and home improvement store merchandise"; (2) remove the except in bulk restriction; and (3) change one-way to radial authority between points in Los Angeles County and Calexico, CA, and points in the U.S. on and east of U.S. Hwy 85 (in part b).

MC 146842 (Sub-5)X, filed July 20, 1981. Applicant: BELL TRUCKING COMPANY, INC., Route 1, Box 81–H, Jonesboro, LA 71251. Representative: James M. Duckett, Suite 411, 221 W. 2nd Street, Little Rock, AR 72201. Applicant seeks to remove restrictions in its Sub-No. 2 permit to broaden the territorial description to between points in the U.S., under continuing contract(s) with named shipper.

MC 148202 (Sub-9)X, filed July 16, 1981. Applicant: K & W ENTERPRISES, INC., 6223 Triport Ct., Greensboro, NC 32809. Representative: Kim G. Meyer, Suite 1200, Atlanta Gaslight Tower, 235 Peachtree St., N.E., Atlanta, GA 30303. Applicant seeks to remove restrictions in its Sub-No. 1F permit to (1) broaden the commodity authority of "such commodities as are dealt in or used by manufacturers of drugs (except commodities in bulk)" by removing the commodities in bulk restriction and (2) broaden the territorial scope to between points in the U.S. under continuing contract(s) with named shipper.

MC 149193 (Sub-1)X, filed July 14, 1981. Applicant: AUBRY TRANSPORTATION, INC., P.O. Box 216, Yorkshire, NY 14173. Representative: William J. Hirsch P.C., 1125 Convention Tower, 43 Court Street, Buffalo, NY 14202. Applicant seeks to remove restrictions in its Sub-No. 1F certificate to: (1) broaden commodity descriptions from metal castings and articles used in the manufacture of

metal castings and pig iron, to "metal products"; and, coke and sand (in bulk, in dump vehicles), to "commodities in bulk"; and (2) change one-way to radial authority between Buffalo, NY, and points in specified northeastern States.

MC 149195 (Sub-14)X, filed April 4, 1981, noticed in the **Federal Register** of April 15, 1981, and May 20, 1981, republished as corrected this issue. Applicant: ARCADIAN MOTOR CARRIERS, 1100 Sierra Street, P.O. Box 427, Kingsburg, CA 93631. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68510. Applicant seeks to remove restrictions in its Sub-Nos. 2F, 3F, 4F, 5F, 6F, 7F, 8F, 9F, 10F, 11F and 12F certificates to (1) broaden the commodity descriptions: from charcoal and charcoal briquettes, lighten fluid hickory chips and equipment, material and supplies to "such commodities used or dealt in by manufacturers and distributors of barbecue products" in Sub-No. 2F; from seat belts and seat belts parts, and materials to "such commodities as are used or dealt in by manufacturers and distributors of automotive products" in Sub-No. 3F; from recreation equipment and sporting goods and materials, equipment and supplies to "such commodities as are used or dealt in by manufacturers and distributors of recreational equipment and sporting goods" in Sub-No. 4F; from grape products and byproducts and commodities otherwise exempt from economic regulation in mixed shipments with those commodities to "food and related products" in Sub-No. 5F; from electronic equipment and parts, accessories, materials and supplies to "such commodities as are used or dealt in by manufacturers and distributors of electronic equipment" in Sub-No. 6F; from malt beverages and materials, equipment and supplies to "alcoholic beverages" in Sub-No. 7F; from labels, bottle filling and labeling machines and materials and supplies to "(1) such commodities as are dealt in by manufacturers and distributors of labels and (2) machinery" in Sub-No. 8F; from plastic expanded foam and products and materials, equipment and supplies to "rubber and plastic products" in sub-No. 9F; from fibreboard to "pulp, paper, and related products" in Sub-No. 10F; from welders, welder parts, welder systems, welding compound and welding supplies and materials and supplies to "such commodities as are used or dealt in by manufacturers of metal articles" in Sub-No. 12F; (2) expand the territorial authority from named points to county-wide authority: Medford, OR to Jackson County, OR in Sub-No. 2F; Fresno, CA to Fresno County, CA, Palmyra, MO to Marion County, MO, and Brownsville, TX to Cameron County, TX in Sub-No. 3F; Sunnyvale, CA to Santa Clara County, CA, El Paso, TX to El Paso County, TX, Wheeling, IL, to Cook County, IL, and Edison, NJ to Middlesex County, NJ in Sub-No. 6F; Aurora, IL to Kane and Dupage Counties, IL, Jefferson City, MO to Cole and Calloway Counties, MO, Marceline to Lynn County, MO, Iola, KS to Allen County, KS, and Topeka, KS to Shawnee County, KS in Sub-No. 10F; (3) delete the facilities restriction in Sub-No. 10F; (4) remove the originating at and destined to restrictions and modify the remaining facilities restrictions in Sub-Nos. 4F, 8F, 11F, and 12F to read "between the facilities of [the named shippers] at points in the U.S., on the one hand, and, on the other, points in the U.S." to allow interline operations. The purpose of republication is to remove the limitations which preclude interlining in the territorial restrictions in Sub-Nos. 4F, 8F, 11F, and 12F.

[FR Doc. 81-22410 Filed 7-30-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Operating Rights Application(s) Directly Related to Finance Proceedings

The following operating rights application(s) are filed in connection with pending finance applications under Section 11343 (formerly Section 5(2)) of the Interstate Commerce Act, or seek tacking and/or gateway elimination in connection with transfer applications under Section 10926 (formerly Section 212(b)) of the Interstate Commerce Act.

On applications filed before March 1, 1979, an original and one copy of *protests* to the granting of authorities must be filed with the Commission within 30 days after the date of this **Federal Register** notice. Such protests shall conform with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities.

Applications filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *General Rules of Practice* also but are subject to petitions to intervene either with or without leave. An original and one copy of the petition must be filed with the Commission within 30 days after date of publication. A petition for intervention must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points. Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, the extent to which petitioner's interest will be represented by other parties, the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Verified statements in opposition should not be tendered at this time. A copy of the protest or petition to intervene shall be served concurrently upon applicant's representative or applicant if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC 99261 (Sub-4), (correction), filed April 7, 1977, published in the **Federal Register** issue of April 28, 1977, and republished May 12, 1977, and May 14, 1981. Applicant: ROOT'S EXPRESS, INC., 11 Karlada Drive, Binghamton, NY 13902. Representative: Martin Werner, 888 Seventh Avenue, New York, NY 10106. Applicant seeks to reopen and modify Decision of the Commission, Division 1, dated March 16, 1979 in MC-99261 (Sub-No. 4) so as to include additional irregular-route operating authority now contained in underlying Certificate of Registration No. MC-99261 (Sub-No. 7) of March 12, 1981 which superseded and cancelled applicant's prior authority in Certificate of Registration No. MC-99261 (Sub-No. 2) of November 25, 1968 and Certificate of Registration No. MC-99261 (Sub-No. 6) of December 6, 1979. As modified, the authority sought shall read as follows: As a common carrier, in interstate and foreign commerce, over irregular routes, transporting: General Commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in

Broome, Cayuga, Chemung, Chenango, Cortland, Delaware, Erie, Genesee, Livingston, Monroe, Niagara, Oneida, Onondaga, Ontario, Orleans, Otsego, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Wayne and Yates Counties, NY.

Notes.—1. The Commission in its Decision of March 16, 1979 in the MC-99261 (Sub-No. 4) proceeding approved the grant of both regular- and irregular-routes authority in lieu of Certificate of Registration. Modification is sought only as to irregular route authority. Applicant is to retain the regular-route authority as previously granted in the March 16, 1979 Decision.

2. This application is directly related to a Section 11343 finance proceeding—MC-F-13173 published in the **Federal Register** issue of April 28, 1977 and was approved by Division 1 Decision of March 16, 1979.

This publication corrects the notice published May 14, 1981, at page 26708 which failed to indicate that service area described consisted of named counties in the State of New York.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-22412 Filed 7-30-81; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-No. 66F)]

Illinois Central Gulf Railroad Co.; Abandonment Between Milepost 661.87 and 728.00 Near Branch Junction and Assumption in Christian, Fayette, Marion, and Shelby Counties, IL; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that on July 21, 1981, the Commission, Review Board Number 1, found that the public convenience and necessity require or permit abandonment by Illinois Central Gulf Railroad Company of its line of railroad between milepost 661.87 and 728.00 near Branch Junction and Assumption in Christian, Fayette, Marion, and Shelby Counties, IL a total distance of 66.13 miles, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979), and subject to the further conditions that ICG shall keep intact all of the right-of-way underlying the track, including all the bridges and culverts, for a period of 120 days from July 21, 1981, to permit any State or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way. A certificate of abandonment will be issued permitting this abandonment unless within 15 days from the date of this publication, the Commission also finds that:

(1) A financially responsible person (or government entity) has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and

(2) It is likely that:

(a) If a subsidy, the assistance would cover the difference between the revenues attributable to the line and the avoidable cost of providing rail freight service on the line, together with a reasonable return on the value of the line, or

(b) If a purchase, the assistance would cover the acquisition cost of all or any portion of the line.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice.

If the Commission makes the findings described above, the effectiveness of the abandonment certificate will be postponed. An offeror may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made for the Commission to set conditions or amount of compensation, the abandonment certificate will become effective. Upon notification to the Commission of the execution of a subsidy or purchase agreement, the Commission shall further postpone the effectiveness of a certificate for such time as the agreement is in effect. Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96-448) and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-22413 Filed 7-30-81; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in the State of Missouri

This notice announces the ending of the Extended Benefit Period in the State of Missouri, effective on July 25, 1981.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unempoyment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, or in the nation as a whole, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when the rate of insured unemployment in the State or in all States collectively reaches the State or National trigger rates set in the Act and the State law. 20 CFR 615.12. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rates set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Missouri on June 1, 1980, and has now triggered off.

Determination of "Off" Indicator

The head of the employment security agency of the State of Missouri has determined, in accordance with the State law and 20 CFR 615.12(e), that the rate of insured unemployment in the State for the period consisting of the week ending on July 4, 1981, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in that State.

Therefore, the Extended Benefit Period in that State terminated with the week ending on July 25, 1981.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the end of the

Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State of Missouri should contact the nearest State Employment Office of the Missouri Division of Employment Security in their locality.

Signed at Washington, D.C., on July 24, 1981.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 81-22390 Filed 7-30-81; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in the State of Nevada

This notice announces the ending of the Extended Benefit Period in the State of Nevada, effective on July 25, 1981.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, or in the nation as a whole, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemploymentcompensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when the rate of insured unemployment in the State or in all States collectively reaches the State or National trigger rates set in the Act and the State law. 20 CFR 615.12. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rates set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Nevada on April 26, 1981, and has now triggered off.

Determination of "Off" Indicator

The head of the employment security agency of the State of Nevada has determined, in accordance with the State law and 20 CFR 615.12(e), that the rate of insured unemployment in the State for the period consisting of the week ending on July 4, 1981, and the immediately preceding twelve weeks, fell below the State triggers rate, so that for that week there was an "off" indicator in that State.

Therefore, the Extended Benefit Period in that State terminated with the week ending on July 25, 1981.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits at the end of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State of Nevada should contact the nearest State Employment Office of the Nevada Employment Security Department in their locality.

Signed at Washington, D.C., on July 24, 1981.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 81-22389 Filed 7-30-81; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, 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

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

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 27th 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
Aileen, Inc., Culpeper Plant (workers).	Culpeper, Va	7/22/81	7/15/81	TA-W-12,854	Ladies' and children's sportswear.
Black Pine Mine Co. (workers).	Phillipsburg, Mont	7/16/81	7/1/81	TA-W-12,855	Silver ore and copper ore.

Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Brown & Sharpe Manufacturing (workers)	N. Kingstown, R.I	7/21/81	7/14/81	TA-W-12,856	Machine tool manufacturing.
Charles M. Reeder & Co., Inc. (company)	Highland Park, Mich	7/23/81	7/20/81	TA-W-12,857	Infrared thermocouples.
Homemaker Sports-line (ILGWU)	Salem, Ill	6/23/81	6/15/81	TA-W-12,858	Sleeping bags, comforters, slumber bags, wrap sacks, and mummies.
International Harvester Co., Pittsburgh, Pa., Truck Branch (workers)	Pittsburgh, Pa	7/21/81	7/14/81	TA-W-12,859	Selling trucks, truck parts and service.
Pacific Trail, Inc. (Teamsters)	Spokane, Wash	7/21/81	7/15/81	TA-W-12,860	Men's, women's and children's sportswear.
Purling Mills (workers)	Tamaqua, Pa	7/21/81	7/15/81	TA-W-12,861	Contractor of ladies' sportswear.

[FR Doc. 81-22395 Filed 7-30-81; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, 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

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

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 20th 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
Buxton, Buxton Box Division (company)	Attleboro, Mass	7/13/81	7/2/81	TA-W-12,842	Vinyl jewel cases.
Hanna Mining Co., Groveland Mine (USWA)	Iron Mountain, Mich	7/14/81	7/10/81	TA-W-12,843	Iron ore pellets.
Jackie Stuart., Inc. (ILGWU)	New York, N.Y	7/13/81	7/7/81	TA-W-12,844	Coats and jackets of wool and cotton.
National Bumper Exchange (workers)	West Memphis, AK	7/14/81	7/9/81	TA-W-12,845	Recycling of car and truck bumpers.
Port Huron Brass Foundry Co. (workers)	Marysville, Mich	7/15/81	7/13/81	TA-W-12,846	Make and supply auto parts to General Motors.
Power Sportwear(workers)	Mineral, Va	7/13/81	7/6/81	TA-W-12,847	Sewing factory for women's sportswear.
Stylemaster, Inc. (ACTWU)	Norfolk, Va	6/24/81	6/19/81	TA-W-12,848	Men's shirts.
Suzette Fashions (ILGWU)	New York, N.Y	7/13/81	7/1/81	TA-W-12,849	Ladies' coats and suits.
Urethane Rubber Corp. (workers)	Port Huron, Mich	7/14/81	7/9/81	TA-W-12,850	Industrial belting.
Art Shirt Ltd, Inc. (workers)	Conshohocken, Pa	1/12/81	1/6/81	TA-W-12,851	Ladies' apparel.
Richard Todd, Inc. (workers)	New York, N.Y	1/12/81	1/6/81	TA-W-12,852	Ladies' sportswear.
Solvent Finishers, Inc. (company)	Westbury, N.Y	7/16/81	7/14/81	TA-W-12,853	Fabrics—polyester, acrylic and cotton.

[FR Doc. 81-22391 Filed 7-30-81; 8:45 am]

BILLING CODE 4510-28-M

Office of Pension and Welfare Benefit Programs

[ORPS Application No. P-2980V]

Employee Benefit Plans; Proposed Alternative Method of Compliance for the November Electric Co.; Profit Sharing Trust

AGENCY: Department of Labor.

ACTION: Notice of proposed alternative method of compliance.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed alternative method of compliance with the summary plan description and summary of material modification requirements of the Employee Retirement Income Security Act of 1974 (the Act) for the November Electric Company Profit Sharing Trust (the Plan). The proposed alternative method of compliance, if granted, would affect participants and beneficiaries and the plan administrators of the Plan.

EFFECTIVE DATE: Written comments must be received by the Department on or before August 31, 1981.

ADDRESSES: All written comments (three copies) should be submitted to: Office of Reporting and Plan Standards, Pension and Welfare Benefit Programs, Room N–4508, U.S. Department of Labor, Washington, D.C. 20216, Attention: November Alternative. The petition for an alternative method of compliance and all comments received will be available for public inspection at the Public Documents Room, 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: John A. Malagrin of the Department 202–523–8684. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed alternative method of compliance with certain reporting and disclosure requirements of the Act for the Plan. The proposed alternative method of compliance was requested in a petition, as amended, filed by Robert A. November, and Burton A. Curtis, trustees of the Plan, pursuant to section 110(a) of the Act.

Summary of Facts and Representations

The petition contains facts and representations with regard to the proposed alternative method of compliance which are summarized below. Interested persons are referred to the petition on file with the Department for the complete representations of the petitioners

1. The Plan covers only two employees: Messrs. Robert A. November and Burton A. Curtis. Both of these participants are trustees of the Plan and fifty percent shareholders of the November Electric Inc.

2. No other persons have ever been participants covered under the Plan. It is not anticipated that any other person will become employed by the firm in the future or become participants in the Plan.

3. Petitioners assert that in their capacity as plan trustees, they have immediate access to plan documents and therefore are aware of their rights under the Act. For this reason, they believe it would be both administratively burdensome and unreasonably costly for the Plan to obtain services from its prototype sponsor in preparing summary plan descriptions at a cost of $50 per SPD.

4. In lieu of the furnishing participants and beneficiaries with a summary plan description as required by section 101(a)(1), 102(a)(1) and 104(b) of the Act, the plan administrator will furnish free of charge, upon the written request of any participant or beneficiary, a copy of the instrument under which the Plan is established or operated. In addition, the plan administrator will be exempt from filing a summary plan description with the Department as required by sections 101(b)(1) and 104(a)(1)(C) of the Act.[1]

5. If the Plan is amended or changed, in lieu of furnishing participants and beneficiaries with a summary of any material modifications and changes as required by sections 102(a)(1) and 104(b)(1) of the Act, the plan administrator will furnish a copy of the amendment or other change to the plan free of charge to each participant and beneficiary. In addition, the plan administrator will be exempt from filing a summary of the material modification with the Department as required by sections 101(b)(3) and 104(a)(1)(D) of the Act.[2]

General Information

Before an alternative method of compliance with the reporting and disclosure requirements may be prescribed under section 110 of the Act, the Department must determine that the use of such alternative method is consistent with the purposes of Title I of the Act and that it provides adequate disclosure to the participants in the plan and adequate reporting to the Department, that the application of the reporting and disclosure requirements of the Act would increase the costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan, having regard to the particular characteristics of the plan or the type of plan involved, and that the application of the reporting and disclosure requirements of the Act would be adverse to the interests of plan participants in the aggregate.

Alternative Method of Compliance

Based upon the facts and representations set forth in the petition, the Department is considering granting the requested alternative method of compliance under the authority of section 110 of the Act. If an alternative method of compliance is granted, the plan administrator of the Plan would not be required to prepare and distribute summary plan descriptions and summaries of material modifications to plan participants or file such documents with the Secretary of Labor, provided that the plan administrator (1) upon the written request of any participant or beneficiary, furnishes free of charge a copy of the instruments under which the Plan is established or operated, and (2) furnishes free of charge to each plan participant and beneficiary a copy of each amendment or other change to the Plan in the event the plan is amended or changed. The alternative method of compliance would also be conditioned on the Plan's having no other participants other than the two trustee shareholders described in its submissions.

Signed at Washington, D.C., this 27th day of July, 1981.

Ian D. Lanoff,

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

[FR Doc. 81-22192 Filed 7-30-81; 8:45 am]

BILLING CODE 4510-29-M

[1] Under section 104(a)(1) of the Act, however, a plan administrator is required to furnish to the Department, upon request, any document under which the plan is established or operated.

[2] Same as footnote 1, above.

Mine Safety and Health Administration

[Docket No. M-81-117-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241, has filed a petition to modify the application of 30 CFR 75.1303 (permissible explosives) to its Westland No. 1 and No. 2 Mines and Mathies Mine located in Washington County, Pennsylvania, Renton Mine located Allegheny County, Pennsylvania and Laurel 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 explosives be used within forty-eight hours after being taken underground.

2. Petitioner states that underground storage of explosives in excess of forty-eight hours will enable the petitioner to eliminate hazardous conditions caused by roof falls more quickly than the present practice of storing explosives in surface magazines; explosives are used in most cases to restore areas of the mine where roof falls have occurred and also to restore obstructed escapeways

and haulage roads to a safe and passable condition.

3. Explosives are presently stored in surface magazines, which are in some instances twelve miles from the fall areas, and as a result, initial clean-up procedures are unnecessarily and unjustifiably delayed on account of the distance over which the explosives must be transported. If the explosives were stored in an underground magazine, they would be more accessible to fall areas and enable the hazardous conditions caused by roof falls to be eliminated quickly.

4. Underground storage of explosives in excess of forty-eight hours eliminates the necessity of hauling unused explosives back to the surface, and thereby reduces the possibility of an accident that may result due to the additional transporting and handling required by surface storage.

5. Underground storage is more conducive to the maintenance of the character of explosives than surface storage because the air temperature in the mine is relatively constant (between 55° F and 63° F) throughout the year while surface air temperature is subject to severe change. The shelf life of the explosives manufactured by DuPont and used by the petitioner is one year stored at ambient temperatures.

6. As an alternative method, petitioner proposes to store explosives in underground magazines for a period not to exceed their shelf lives. The underground magazines shall be of substantial construction with no metal exposed on the inside, and shall be located in a dry, well rock-dusted and well ventilated area at least twenty-five feet from roadways and power lines.

7. Petitioner states that the proposed alternative method 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 (insert date 30 days from publication in the **Federal Register**). Copies of the petition are available for inspection at that address.

Dated: July 24, 1981.

Frank A. White,

Director, Office of Standards, Regulations and Variances

[FR Doc. 81-22398 Filed 7-30-81; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 81-63; Exemption Application No. D-1867]

Exemption From the Prohibitions for Certain Transactions Involving the Fisher Employees' Profit Sharing Plan and Trust, Located in Dickinson, N. Dak.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the sale by the Fisher Employees' Profit Sharing Plan and Trust (the Plan) of a parcel of real property to the Fisher Sand and Gravel Company (the Employer), a co-sponsor of the Plan.

FOR FURTHER INFORMATION CONTACT: Louis Campagna 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, telephone (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 2, 1981, notice was published in the **Federal Register** (46 FR 29564) 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 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 sale of a parcel of real property by the Plan to 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 it has satisfied the provisions of the notice to interested persons 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 appliable 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; not 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 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 sale by the Plan to the Employer of a parcel of real property located in Stark County, North Dakota for a cash price of $65,000, provided this amount is not less than the fair market value of the parcel of real property at the time of the sale.

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 27th day of July, 1981.

Ian D. Lanoff,

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

[FR Doc. 81-22403 Filed 7-30-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-64; Exemption Application No. D-1910]

Exemption From the Prohibition for Certain Transactions Involving Hesselbart & Mitten and Related Companies Profit Sharing Plan and Trust Located in Akron, Ohio

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits: (1) the modification effective November 1, 1979 (1979 Modification), of a lease of real property located in Akron, Ohio (the Property) by the Hesselbart & Mitten and Related Companies Profit Sharing Plan and Trust (the Plan) to Arocom, Inc. (Arocom), a party in interest with respect to the Plan; (2) the continuation of a sublease (the Sublease), effective on the date the exemption is granted, of a portion of the Property by Arocom to Hesselbart & Mitten, Inc. (H & M), a party in interest with respect to the Plan; and (3) the proposed lease (the Proposed Lease) of the Property by the Plan to Arocom to commence on the date the exemption is granted.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler 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. The telephone number is (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 3, 1981, notice was published in the **Federal Register** (46 FR 20330) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above-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. No requests for a hearing were received by the Department, but one letter was received from the applicant's representative who stated that the applicant was unable to distribute the notice to interested persons prior to April 18, 1981, which was the deadline for such distribution. The applicant completed the distribution of the notice on April 30, 1981 and requested that the comment period be extended from May 18, 1981 to May 30, 1981, so as to provide interested parties with the required 30-day comment period. The applicant stated that the notice informed interested parties that the comment period had been extended to May 30, 1981. The Department agreed to the applicant's modified compliance with the notice provisions of the proposed exemption. No comments other than the applicant's were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(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 (E) of the Code, shall not apply to: (1) effective November 1, 1979, to the 1979 Modification, provided that the terms and conditions of the 1979 Modification have at all times been at least as favorable to the Plan as those it could have secured from an unrelated third party; (2) to the Sublease between Arocom and H & M; and (3) to the Proposed Lease, provided that the terms and conditions of the latter two transactions are at least as favorable to the Plan as those with an unrelated third party would be.

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 transactions that are the subject of this exemption.

Signed at Washington, D.C., this 27th day of July 1981.

Ian D. Lanoff,

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

[FR Doc. 81-22402 Filed 7-30-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-65; Exemption Application No. D-1947]

Exemption From the Prohibitions for Certain Transactions Involving the Watson Clinic Profit Sharing Plan Located in Lakeland, Fla.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption would exempt a loan of money (the Loan) by the Watson Clinic Profit Sharing Plan (the Plan) to the Watson Clinic (the Employer), the sponsor of the Plan.

FOR FURTHER INFORMATION CONTACT: Louis Campagna 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) 523-7352. (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION: On April 24, 1981, notice was published in the **Federal Register** (46 FR 23348) 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 transaction described in an application filed by the Employer and the Plan. 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 complied with the requirements of notification to interested persons 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 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 Loan by the Plan to the Employer of the lesser of $3,000,000 or 35% of the assets of the Plan 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 party.

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 27th day of July 1981.

Ian D. Lanoff,

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

[FR Doc. 81-22401 Filed 7-30-81; 8:45 am]

BILLING CODE 4510-29-M

[Application Nos. D-2176 and D-2182]

Proposed Exemption for Certain Transactions Involving the Nationwide Acceptance Corporation Employees' Profit Sharing and Pension Plans Located in Chicago, 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 depositing of funds by the Nationwide Acceptance Corporation Employees' Profit Sharing Plan (the Profit Sharing Plan) and Pension Plan (the Pension Plan, collectively, the Plans) in compensating balance accounts on behalf of Nationwide Acceptance Corporation (the Employer). The proposed exemption, if granted, would affect the Employer, participants and beneficiaries of the Plans.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before September 21, 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 Nos. D–2176 and D–2182. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Department of Labor, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given on the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plans, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Temporary Nature of the Exemption

The proposed exemption is temporary and, if granted, will expire five years after the date of grant with respect to the depositing of the Plans' funds in any compensating balance account. Should the applicant wish to continue entering into the transactions beyond the five year period, another application for exemption may be submitted.

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 Employer, a closely held corporation, is in the business of sales and commercial financing. As of September 5, 1980, it had 70 full and part-time employees. There are two qualified employee benefit plans which are maintained for the employees of the Employer; the Profit-Sharing Plan which was adopted in 1966 and the Pension Plan which was adopted in 1978. As of May 31, 1980, the assets of the Profit-Sharing Plan totaled $712,223 and the assets of the Pension Plan totaled $181,310.

2. In the course of its business, often times the Employer borrows funds from banks. These loans require a non-interest bearing account called a compensating balance account to be maintained with the lender-banks, a practice which the Employer represents is customary in the finance business.

3. It is proposed that the Plans deposit funds in the compensating balance accounts on behalf of the Employer. The interest rate to be paid to the Plans will be one quarter percent above the prevailing prime rate at the time the funds are deposited. This is in contrast to the rate which the Employer has been paying Lakeside Insurance Company of Seattle, Washington, (Lakeside) which has deposited funds in compensating balance accounts for the Employer of four different occasions since May 2, 1980. The interest rate paid to Lakeside was determined by the prevailing rate paid by banks for 6 month certificates of deposits. In all four transactions, if the Plans had provided the funds for the compensating balances, the interest rate paid to them would have been higher than the rates actually paid to Lakeside. The Employer represents that interest payments to the Plans in excess of fair market value will not cause participants' accounts to exceed the limitations of section 415 of the Code.

4. The maximum amount to be deposited in compensating balance accounts will be 25% of the Plans assets. The longest period of time that money from the Plans will be outstanding in a compensating balance account will be one year and in most instances will not exceed six months.

5. At no time will any of the Plans' funds be deposited in any compensating balance account until the interest is paid by the Employer, thus assuring the interest income to the Plans.

6. Mr. Michael Schwartz, president and sole shareholder of Financial & Pension Consultants, Inc., the corporation which acts as consultant and administrator for the Plans, will act as trustee for the transactions. Mr. Schwartz will be responsible for ascertaining that the Plans will have received the proper fee in advance from the Employer before they commit any money to the compensating balance accounts. In addition, each time Plan funds are to be deposited in a compensating balance account, Mr. Schwartz in his capacity as fiduciary to the Plans must determine that the transaction is appropriate for the Plans and is in the best interest of the Plans and their participants and beneficiaries. Mr. Schwartz has no stock or directorship in the Employer or in any subsidiaries or affiliates; and no stockholders, officers, or directors of the Employer, or of any of its subsidiaries or affiliates, has any ownership or directorship in Financial & Pension Consultants, Inc. Financial & Pension Consultants, Inc. had total gross revenues of approximately $150,000 for the twelve month period ending November 30, 1980 and it is estimated that the total billings will be approximately $250,000 in the year to come. Annual gross fees from the Employer and the Plans are not expected to exceed $1,800 in 1980 or 1981.

7. The transactions will provide that the Employer and its creditors will not be able to withdraw the funds from the compensating balance accounts and the lender-bank will not be able to claim the compensating balance account in satisfaction of any debts owing to it from the Employer or its subsidiaries, or affiliates. The money will at all times remain in the name of the Plans.

8. In summary, the applicants represent that the proposed depositing of the Plans' funds in compensating balance accounts on behalf of the Employer satisfies the criteria of section 408(a) of the Act because (a) no deposit

will be put in any compensating balance accounts until such time as the Employer has beforehand paid interest for the use of such money; (b) the interest rate to be paid to the Plans will be greater than the rate required by a third party lender; (c) the longest period of time that any one transaction will be outstanding is one year and in most instances will not exceed six months, and at no time will more than 25% of the Plans' assets be deposited in the compensating balance accounts; (d) an independent fiduciary will oversee the transactions and not allow the depositing of the Plans' funds in the compensating balance accounts until the proper fee has been received by the Plans; (e) title to the funds on deposit as compensating balances will remain in the name of the Plans, and neither the Employer nor any of its creditors will be able to withdraw any of the Plans' funds; (f) the lender-bank will not be able to claim the compensating balance account in satisfaction of any debts owing to it from the Employer; and (g) the independent fiduciary represents that each time a transaction of this nature is proposed for the Plans, he must make a determination that the transaction is appropriate for the Plans and is in the best interest of the Plans and their participants 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

Notice will be given to all present participants and all former participants and beneficiaries with a vested interest in the Plans within twenty (20) days after the publication of the notice of pendency in the **Federal Register**. Such notice will be sent by first class mail, and will include a copy of the notice of pendency and a statement informing the interested persons of their right to comment and request a hearing within the period set forth 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 product fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the depositing of funds by the Plans in compensating balance accounts on behalf of the Employer provided the terms of each transaction are not less favorable to the Plans than those obtainable in an arm's length transaction with an unrelated party. The proposed exemption, if granted, will expire 5 years after the date of grant with respect to the depositing of the Plan's funds in a compensating balance account and 6 years after the date of grant with respect to the termination of all transactions entered into during the 5 year period.

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 28th day of July, 1981.

Ian D. Lanoff,

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

[FR Doc. 81–22400 Filed 7–30–81; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 81–60; Exemption Application No. D–1412]

Exemption From the Prohibitions for Certain Transactions Involving the Carpenters Pension Trust for Southern California Located in Los Angeles, Calif.

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits the retroactive and prospective leasing of office space by the Carpenters Pension Trust for Southern California (the Trust) to the American Benefit Plan Administrators, Inc. (ABPA), the Martin Segal Company, Inc. (Segal), and Bernard Kotkin Co. (Kotkin), all of whom are parties in interest in relation to the Trust.

EFFECTIVE DATE: This exemption is effective January 1, 1975.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, 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) 523–8671. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 2, 1981, notice was published in the **Federal Register** (46 FR 29563) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (D) of the Code, for the transactions described in an application filed on behalf of the Trust. 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. The applicant has represented that a copy of the notice has been furnished to interested persons by June 16, 1981, in compliance with the requirements set forth in the notice of proposed exemption. No public comments 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 othe 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) of the Act and section 4975(c)(1) (E) and (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 Trust and of its participants and beneficaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Trust.

Accordingly 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, effective January 1, 1975, to the leasing of the office space in buildings located at 500 S. Virgil Ave., 520 S. Virgil Ave., and 2999 W. Sixth Street, Los Angeles, California to ABPA, Kotkin, and Segal, provided that each leasing transaction which has taken place or will take place was and will be on terms no less favorable to the Trust than terms available in an arm's length transaction with an unrelated third party.

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 transactions which are the subject of this exemption.

Signed at Washington, D.C., this 27th day of July 1981.

Ian D. Lanoff,

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

[FR Doc. 81–22406 Filed 7–30–81; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 81–62; Exemption Application No. D–1563]

Exemption From the Prohibitions for Certain Transactions Involving the Misener Profit Sharing Plan and Gulf Foundation, Inc. Profit Sharing Plan Located in St. Petersburg, Florida

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption would exempt: (1) the leasing of barges and tugboats by the Misener Barge & Boat Rental, Inc. (MB&B, a corporation wholly owned by the Misener Profit Sharing Trust) (MPT, a commingled investment trust) to Misener Marine Construction (MMC, the sponsoring employer); (2) the servicing of MB&B barges and tugboats by MMC and Misener Industries, Inc. (MIC, a corporation wholly owned by MMC); (3) the purchase of barges by MB&B from MIC; (4) the guarantee by MMC of loans made to MB&B by unrelated lending institutions; (5) the exchange of MB&B stock for MMC stock of comparable value; and (6) the cash sale of a parcel of real estate (the Real Estate) by the MPT to Richard H. and/or Mary Jane Misener parties in interest with respect to the MPT.

EFFECTIVE DATE: The exemption will be effective from: (1) January 1, 1975 until the date of the stock exchange between MB&B and MMC for the leasing of the MB&B barge and tugboat fleet; (2) from January 1, 1975 until October 31, 1978 for the servicing of the MB&B barge and tugboat fleet; (3) from March 20, 1976 until May 23, 1977 for the purchase of barges from MIC; (4) from February 27, 1976 and prospectively for the guarantees of MMC; and (5) from the date the exemption grant is published in the **Federal Register** for the exchange of MB&B and MMC stock and sale of the Real Estate.

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen 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) 523-6915. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 9, 1981, notice was published in the **Federal Register** (46 FR 30600) 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 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 in accordance with the requirements set forth in the notice. No public comments and no requests for a hearing were received by the Department.

The applicant has requested that the relief proposed regarding the sale of the Real Estate be expanded to include a possible sale to either Richard H. or Mary Jane Misener or both. Those counseling the Miseners in their tax and financial affairs have suggested that this change be made from the relief originally proposed. The Department has determined that this modification does not materially affect the transaction involving the sale of the Real Esate and therefore has incorporated the requested change in the final grant of this exemption.

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; no 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 Misener and Gulf Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Misener and Gulf Plans.

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 following transactions for the time periods as noted:

1. Retroactive Relief for—

a. The servicing of the MB&B barge and tugboat fleet by MMC and MIC from January 1, 1975 until October 31, 1978; and

b. The purchase by MB&B of barges from MIC between March 20, 1976 and May 23, 1977, provided the terms and conditions of the above described transactions have at all times been at least as favorable to the plans participating in the MPT as those they could have secured from unrelated third parties.

2. Retroactive and Prospective Relief for—

a. The leasing by MB&B of its barge and tugboat fleet to MMC and related companies from January 1, 1975 until the date of the stock exchange between MBB and MMC, provided that the terms and conditions of the leasing arrangements at all times have and will continue to be at least as favorable to the plans participating in the MPT as those they could have secured from unrelated third parties; and

b. The guarantee by MMC of loans made to MB&B by unrelated lending institutions from February 27, 1976 and continuing beyond the date this exemption grant is published in the **Federal Register** until MMC is released by such lending institutions; and

3. Prospective Relief for—

a. The exchange of all MB&B stock for shares of MMC stock within sixty (0)) days after the effective date of the exemption; and

b. The cash sale of the Real Estate to Richard H. and/or Mary Jane Misener; provided that the terms and conditions of the sale and exchange are at least as favorable to those plans participating in the MPT as similar transactions with an unrelated third party would be.

The availability of this exemption is 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 this exemption.

Signed at Washington, D.C., this 27th day of July, 1981.

Ian D. Lanoff,

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

[FR Doc. 81-22404 Filed 7-30-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-61; Exemption Application No. D-1450]

Exemption From the Prohibitions for Certain Transactions Involving the Pridgeon & Clay, Inc. Restated Profit-Sharing Retirement Plan and Trust and the Pridgeon & Clay, Inc. Restated Pension Plan and Trust Located in Grand Rapids, Michigan

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption would exempt financing, conveyancing, and leasing arrangements with respect to certain real property (the Project) involving both the Pridgeon & Clay, Inc. Restated (the Profit) involving both the Pridgeon & Clay, Inc. Restated Profit Sharing Retirement Plan and Trust (the Profit Sharing Trust) and the Pridgeon & Clay, Inc. Restated Pension Plan and Trust (the Pension Trust) (collectively referred to as the Plans) and the Michigan National Bank of Grand Rapids, Michigan (the Bank), the Economic Development Corporation of the City of Grand Rapids (EDC) and the Pridgeon & Clay, Inc. (the Employer).

FOR FURTHER INFORMATION CONTACT: C. E. Beaver 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. 20016. (202) 523-8671. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 12, 1981, notice was published in the **Federal Register** (46 FR 31107) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406(b), and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (F) of the Code, for the transactions described in an application filed by the trustees of the Plans on behalf of the Employer and the Plans pursuant to 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). 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 commits 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 it has complied with the requirements of the notification to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

This application was filed with both the Department and the Internal Revenue Service. However, 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 is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of sections 406(a), 406(b), and 407(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 (F) of the Code, shall not apply to the financing, conveyancing, and leasing arrangements involving the indirect loan to the Plans of $1,500,000 by the Bank, the lease and repurchase agreement by EDC and the Plans, and the agreement for leasing the Project to the Employer by the Plans, or to the conveyances, assignments, guarantees and extension of credit according to the terms and conditions as described in the application.

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 27th day of July 1981.

Ian D. Lanoff,

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

[FR Doc. 81-22405 Filed 7-30-81; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Coca Cola Co., Inc., et al.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period July 20-24, 1981.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each

of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-10,367; Coca Cola Co., Inc., Tenco Div., Linden, NJ
TA-W-10,713; Pittsburgh Wire Form and Mfg. Co., Pittsburgh, PA
TA-W-10,462; Crown Cork and Seal Co., Inc., Machinery Division, Baltimore, MD
TA-W-10,918; The Sperry Rubber & Plastic Co., Inc., Rural Route #2, Brookville, IN
TA-W-10,014; Atlantic Steel Co., Atlanta, GA
TA-W-11,631; D.A.B. Industries, Inc., Athens, AL
TA-W-10,886; Rockwell International Corp., Wellington, OH
TA-W-11,172; Thorsby Manufacturing Co., Inc., Thorsby, AL
TA-W-11,430; Chatham Dress Co., Inc., Garden City, GA
TA-W-11,431; Cheraw Mfg. Co., Inc., Cheraw, SC
TA-W-11,432; Chesterfield Dress Co., Inc., Chesterfield, SC
TA-W-11,436; Walterboro Dress Co., Inc., Walterboro, SC
TA-W-10,976; Electro Wire Products, Inc., Holland, MI
TA-W-10,419; Jackson Drop Forge Co., Jackson, MI
TA-W-10,590; Rancour Machine Products, Inc., Reed City, MI
TA-W-10,579; Lehigh Structural Steel Co., Allentown, PA
TA-W-10,982; Lardens Plastics, Davisburg, MI

In each of the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to worker separations at the firm.

TA-W-12,496; Delson Lumber Co., Inc., Olympia, WA
TA-W-12,320; General Motors Corp., General Motors Assembly Div., Oklahoma City, OK
TA-W-11,937; Chrylser Corp., Belvidere Assembly Plant, Belvidere, IL
TA-W-11,862; Weyerhaeuser Co., Snoqualmie Sawmill, Snoqualmie, WA

TA-W-12,314; Overture, Inc., New York, NY

Investigation revealed that workers of the firm do not produce an article within the meaning of Section 223 of the Act.

TA-W-10,362; Indianapolis Rubber Co., Indianapolis, IN

Investigation revealed that criterion (3) has not been met. With respect to inner tubes, a survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm. With respect to rim flaps, U.S. imports are negligible.

TA-W-12,252; Ronart Industries, Inc., Detroit, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of stamping dies are negligible.

TA-W-12,495; Cuddlecoat, Inc., New York, NY

Investigation revealed that criterion (3) has not been met. Separations from the subject firm were seasonal in nature.

TA-W-10,862; Dana Corp., Weatherhead Div., Antwerp, OH

Investigation revealed that criterion (3) has not been met. With respect to power steering hose assemblies, a survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

With respect to steel hose ends and fittings, the investigation revealed that criterion (2) has not been met.

TA-W-10,872; Park-Ohio Industries, Inc., Morco, Inc., Div., Bedford Heights, OH

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of wheels for motor vehicle use did not increase as required for certification.

TA-W-9067; U.S. Steel Corp., Johnstown-Canton Work, Canton, OH

Investigation revealed that criterion (3) has not been met. None of the workers at the bar nulls receiving iron rolls from Canton have been certified eligible to apply for adjustment assistance.

TA-W-11,055; Federal-Hewitt Corp., Hamtramck, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of lead tin base solder are negligible.

TA-W-10,376; Successful Creations, Inc., Northvale, NJ

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of finished fabric did not increase as required for certification.

Affirmative Determinations

TA-W-10,222; Sheller-Globe Corporation, Plastics Division, Grabill, IN

A certification was issued covering all workers of the firm separated on or after July 30, 1979.

I hereby certify that the aforementioned determinations were issued during the period July 20-24, 1981. Copies of these determinations are available for inspection in Room S-5314, U.S. Department of Labor, Employment and Training Administration, 601 "D" Street, NW, Washington, D.C. 20013 during normal working hours or will be mailed to persons who write to the above address.

Dated: July 28, 1981.

Marvin M. Fooks,
Administrator, Office of Trade Adjustment Assistance.

[FR Doc. 81-22394 Filed 7-30-81; 8:45 am]
BILLING CODE 4510-28-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Dana Corp., et al.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period July 13-17, 1981.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with

articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-9446; Dana Corp., Victor Div., Havana Gasket Plant, Havana, IL
TA-W-9329; V.J.G. Apparel, Inc., Brooklyn, NY
TA-W-9642; Whitaker Cable Corp., Component Parts Plant, Excelsior Springs, MO
TA-W-9314; Synpol, Inc. (formerly Texas-U.S. Chemical Co.), Port Neches, TX
TA-W-9359; Jo-Nan Enterprises, Inc., New York, NY
TA-W-11,343; McInerney Spring & Wire Co., Grand Rapids, MI
TA-W-10,284; E&S Sportswear, Inc., Passaic, NJ
TA-W-10,927; Theodore Bargman Co., Coldwater, MI
TA-W-10,624 & 11,866; Danbar, Inc., Mt. Clemens, MI and Warren, MI
TA-W-10,574; Champion Home Builders, Dryden Products Div., Dryden, MI
TA-W-11,169; Maui Divers of Hawaii, Ltd., Honolulu, HI
TA-W-10,857; Western Cold Drawn Steel, Div. of Stanadyne, Gary, IN
TA-W-10,652; TRW, Inc., Ross Gear Div., Lebanon, TN
TA-W-10,513; Barnes Group, Inc., Plymouth, MI
TA-W-11,015; Mercier Corp., Dearborn, MI
TA-W-11,206; Lomar Corp., Cincinnati, OH
TA-W-11,323; Brookside Corp., McCordsville, IN
TA-W-10,238; B.F. Goodrich Co., Plant #3, Akron, OH
TA-W-10,293; Art's Woods Models and Plastics Co., Mt. Clemens, MI
TA-W-10,383; W.F. Meyers Co., Bedford, IN
TA-W-11,919; King Shake Mill, Concrete, WA
TA-W-10,947; Saxon Trousers Mfg. Co., Inc., Scranton, PA
TA-W-10,660; Croswell Plastics, Inc., Croswell, MI
TA-W-10,635; Rockwell International, Plastics Division, Ashtabula, OH
TA-W-12,183; Slinger Foundry Co., Inc., Slinger, WI
TA-W-11,774; Murphy Diesel Co., Milwaukee, WI
TA-W-11,968; Hawley Coal Mining Corp., #10 Deep Mine, McDowell County, WV

In each of the following cases the investigation revealed that workers do not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-9401; Beals, McCarthy and Rogers, Inc., Buffalo, NY
TA-W-9740; Prime Tube, Inc., Plymouth, MI
TA-W-12,204; Michigan Metal Processing Corp., Brooklyn, OH
TA-W-11,127; Teleweld, Inc., South Buffalo Railway Operation, Irving, NY
TA-W-12,291; Tenva, Inc., Nogales, AZ
TA-W-12,313; General Machine Design, Inc., Warren, MI
TA-W-10,603; Beaver Street Trading Corp., New York, NY
TA-W-11,904; Mid-State Plating Co., Flint, MI

TA-W-9487; Grandoe Corp., Gloversville, NY

Investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to worker separations at the firm who are primarily engaged in employment related to receiving, packaging and reshipping of imported gloves.

TA-W-10,639; Blairsville Mfg. Co., Blairsville, PA

Investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to worker separations at the firm.

TA-W-12,522; Chrysler Corp., St. Louis Parts Depot, Hazelwood, MO

Investigation revealed that criterion (3) has not been met. A direct and significant connection cannot be established between layoffs at the St. Louis Parts Deport and production declines at certified Chrysler assembly or component plants.

TA-W-10,625; Men'dels, Inc., Kansas City, MO

Investigation revealed that criterion (3) has not been met. Separations from the subject firm were seasonal in nature.

TA-W-10,578; Jones and Laughlin Steel Corp., Aliquippa Works, Aliquippa, PA

Investigation revealed that criterion (3) has not been met. With respect to tin plate and carbon steel wire, a survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm. With respect to tubular products, hot rolled bars and bar size light shapes, the investigation revealed that criterion (2) has not been met. With respect to hot rolled sheet and strip, cold rolled sheet and rod, U.S. imports did not increase as required for certification.

TA-W-10,332; Southfield Machine Products, Inc., Southfield, MI

Investigation revealed that criterion (3) has not been met. With respect to intake manifolds, a survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm. With respect to brackets and supports, sales, and production increased.

TA-W-11,693; Boeing Company, Eddystone, PA

Investigation revealed that criterion (3) has not been met. With respect to rail cars, increased imports did not contribute importantly to worker separations at the firm. With respect to military helicopters, there are no imports.

TA-W-11,006; Rack Processing Co., Dayton, OH

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of electroplating racks are negligible.

TA-W-11,861; Weyerhaeuser Co., Snoqualmie Falls, WA

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of softwood logs, softwood plywood and plywood are negligible. U.S. imports of softwood lumber did not contribute importantly to declines in production or employment at the subject firm.

TA-W-11,505; Crucible, Inc., Midland, PA

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of stainless steel sheet and strip and alloy steel bars did not increase as required for certification.

TA-W-10,282; Z & W Foods, Inc., Buffalo, NY

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of sausage and bacon are negligible. U.S. Imports of pork hams and shoulders have not increased as required for certification.

TA-W-12,053; Baldt, Inc., Chester, PA

Investigation revealed that criterion (1) has not been met. Employment did not decrease as required for certification.

TA–W–9431; Spano Shoe Products, Inc., Brooklyn, NY

Investigation revealed that criterion (3) has not been met. With respect to shoes, a survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm. With respect to bottomstock materials, U.S. imports did not increase as required for certification.

TA–W–9225; Pagano Gloves, Inc., Johnstown, NY

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of gloves did not increase as required for certification.

TA–W–11,959 & 11,967; E.I. Du Pont De Nemours & Co., Chattanooga, TN and Old Hickory, TN

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of all yarns, of nylon, polyester, acrylic and other noncellulasic staple and low fibers, of polyester flake, of synthetic non-woven fabrics, of dimethyl terephthalate are negligible.

TA–W–11,262; Our Darling Sportswear Co., New York, NY

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of women's, girls and infants swimsuits did not increase as required for certification.

Affirmative Determinations

TA–W–11,188; Redwood City Knitting Mills, Inc., Redwood City, CA

A certification was issued covering all workers of the firm separated on or after September 6, 1979 and before January 31, 1981.

TA–W–10,356; The Metal Products Co., Niles, OH

A certification was issued covering all workers of the firm separated on or after January 1, 1980.

TA–W–9945; Kay-Townes, Inc., Rome, GA

A certification was issued covering all workers producing electronic television antenna accessories separated on or after July 9, 1979.

With respect to worker producing television antennas, the investigation revealed that criterion (3) has not been met. U.S. imports of outdoor television antennas are negligible.

I hereby certify that the aforementioned determinations were issued during the period July 13–17, 1981. Copies of these determinations are available for inspection in Room S–5314, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, D.C. 20210 during normal working hours or will be mailed to persons who write to the above address.

Dated: July 21, 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-22393 Filed 7-30-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-11,543]

Florsheim Shoe Co., Chaffee, Missouri; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 31, 1980 in response to a worker petition received on October 20, 1980 which was filed on behalf of workers at the Florsheim Shoe Company.

An active certification covering the petitioning group of workers remains in effect (TA–W–6026). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C., this 17th day of July 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-22396 Filed 7-30-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,222]

Sheller-Globe Corp., Plastics Division, Grabill, Indiana; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents 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 18, 1980 in response to a petition which was filed by the Allied Industrial Workers of America on behalf of workers at the Grabill, Indiana plant of the Plastics Division, Sheller-Globe Corporation.

The workers produce plastic automotive steering wheels.

U.S. imports of automotive steering wheels increased absolutely and relative to domestic production in Model Year (MY) 1980 compared with MY 1979.

A Department survey revealed that customers representing a preponderance of division sales increased purchases of imported steering wheels absolutely and relative to domestically-produced steering wheels, while decreasing purchases from the Plastics Division of Sheller-Globe Corporation during the period under investigation.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with plastic automotive steering wheels produced at the Grabill, Indiana plant of the Plastics Division, Sheller-Globe Corporation 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 the workers of the Grabill, Indiana plant of the Plastics Division, Sheller-Globe Corporation who became totally or partially separated from employment on or after July 30, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 23rd day of July 1981.

Bert Lewis,

Administrator, Unemployment Insurance Service.

[FR Doc. 81-22392 Filed 7-30-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-11,896]

Technical Plastic Extruders, Inc., Kearny, New Jersey; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 15, 1980 in response to a worker petition received on December 8, 1980 which was filed on behalf of workers at Technical Plastic Extruders, Inc., Kearny, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 17th day of July 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-22397 Filed 7-30-81; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL ENDOWMENT FOR THE ARTS

Design Arts Panel (Design Demonstration Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel, Design Demonstration Section, to the National Council on the Arts will be held on August 19-20, 1981, from 9:00 a.m.-6:00 p.m. in Room 1422 of the Columbia Plaza Office Complex, 2401 E Street, NW, 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.

July 27, 1981.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 81-22347 Filed 7-30-81; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Panel (Fellowship Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Fellowship Section of the Design Arts Advisory Panel to the National Council on the Arts will be held on August 17-18, 1981, from 9:00 a.m.-6:00 p.m., in Room 1422 of the Columbia Plaza Office Complex, 2401 E Street, NW, 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.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 81-22348 Filed 7-30-81; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Panel (Services to the Field); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Services to the Field Section of the Media Arts Advisory Panel to the National Council on the Arts will be held on August 31-September 1, 1981; from 9:00 a.m.-6:00 p.m. in Room 1422 of the Columbia Plaza Office Complex, 2401 E Street, NW., 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 27, 1981.

[FR Doc. 81-22349 Filed 7-30-81; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts Revised Systems of Records

AGENCY: National Endowment for the Arts.

ACTION: Notice of revisions to systems of records.

SUMMARY: National Foundation on the Arts and the Humanities Systems of Records under the Privacy Act of 1974 were last published in the **Federal Register** December 17, 1976, 41 FR 55308 (1976). The following notice updates information included in the earlier notice of systems of records maintained by the Arts Endowment.

FOR FURTHER INFORMATION CONTACT: Susan Liberman, Assistant General Counsel, National Endowment for the Arts, Washington, D.C. 20506, 202/634-6588.

SUPPLEMENTARY INFORMATION: The National Endowment for the Arts and the National Endowment for the Humanities no longer share an administrative staff. Also, locations of systems and retention and disposal information have changed during the past several years. The following updates the Arts Endowment's notice of systems of records by reflecting these changes.

Dated: July 27, 1981.

Robert Wade,

General Counsel, National Endowment for the Arts.

Alphabetical List of Systems Names

Consultants-NEA-1
Contracts-NEA-2
Employee Payroll, Leave and Attendance Records and Files-NEA-3
Equal Employment Opportunity Case File-NEA-4
Grant Applications-NEA-5
Grants to Individuals-NEA-6
Personnel Records-NEA-7
Fellows-NEA-8

NEA-1

SYSTEM NAME:

Consultants NEA-1.

SYSTEM LOCATION:

2401 E St., NW, Washington, D.C. 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present members of the National Council on the Arts, and grant or policy panelists serving on advisory panels to the National Endowment for the Arts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, address and telephone number of individual. Contains correspondence and routine administrative records relating to travel, and remuneration. May contain curriculum vitae and press clippings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 et seq.).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Identification of NEA consultants, and their activities; disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in letter size folder.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records are maintained in lockable drawers or file cabinets.

RETENTION AND DISPOSAL:

Unscheduled records, disposition to be determined.

SYSTEM MANAGER(S) AND ADDRESS:

Director, NEA Program Offices, and Director, Council and Panel Operations, National Endowment for the Arts, 2401 E St., NW., Washington, D.C. 20506.

NOTIFICATION PROCEDURE:

See Title 45 CFR Part 1115.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained, newspapers and journals, NEA employees.

SYSTEM NAME:

Contracts NEA–2

SYSTEM LOCATION:

Contracts Section, Office of Administration, Rm. W–728, 2401 E St., NW, Washington, D.C. 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have entered into contracts with the National Endowment for the Arts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains contract, contract number, name and address of contractor, specific and general contract provisions, contract amendments, correspondence, relevant backup material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the arts and the Humanities act of 1965, as amended (20 U.S.C. 951 et seq.).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General Accounting Office audits, general congressional oversight; disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in legal size folder, and machine-readable file.

RETRIEVABILITY:

Indexed by name and contract number.

SAFEGUARDS:

Records are maintained in a lockable file cabinet.

RETENTION AND DISPOSAL:

Disposition in accordance with GRS 3, Item 4a.

SYSTEM MANAGER(S) AND ADDRESS:

Contracting Officer, National Endowment for the Arts, 2401 E St., NW, Washington, D.C. 20506.

NOTIFICATION PROCEDURE:

See Title 45 CFR Part 1115.

RECORD ACCESS PROCEDURE:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained. NEA employees involved in contract development, administration, and execution.

NEA–3

SYSTEM NAME:

Employee payroll, and leave and attendance records NEA–3.

SYSTEM LOCATION:

Personnel Division, Rm. W–711, 2401 E St., NW, Washington, D.C. 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NEA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of manual and machine-readable files containing payroll-related information for NEA employees. Payroll and leave and attendance records and information includes many records or information also maintained in employee's official personnel folder and related files maintained in accordance with Office of Personnel Management regulations and of which notice has been given in its notice of Government wide systems of personnel records. Payroll and related information consists of various forms which disclose on a biweekly, year-to-date, and in some cases an annual basis, payroll and leave data for each employee relating to rate and amount of pay, leave, and hours worked, and leave balance; tax and retirement deductions; life insurance and health insurance deductions; savings allotments; savings bond and charity deductions; mailing addresses and home addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 et seq.). Federal Personnel Manual and Treasury Fiscal Requirements Manual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used to prepare payroll and to meet Government payroll recordkeeping and reporting requirements, and for retrieving and supplying payroll and leave information as required for agency needs. Office of Personnel Management Notice of Governmentwide Systems of

Personnel Records: "OPM—General Personnel Records (Official Personnel folder and records related thereto)"; disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files, and GSA administered MAPS, automated payroll system.

RETRIEVABILITY:

Indexed by name, and social security number.

SAFEGUARDS:

Manual records are maintained in lockable file cabinet. Accessibility to MAPS system limited to authorized personnel using code.

RETENTION AND DISPOSAL:

Records maintained for three years or until audited by the General Accounting Office.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel officer, Room W–711, 2401 E St., NW, Washington, D.C. 20506.

NOTIFICATION PROCEDURE:

See Title 45 CFR Part 1115.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

NEA–4

SYSTEM NAME:

Equal Employment Opportunity Case File NEA–4.

SYSTEM LOCATION:

Equal Employment Opportunity Program, Room 1300, 2401 E St., NW, Washington, D.C. 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NEA employees and job applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains transcripts, documentation concerning pre-complaint counseling activities, documentation concerning filing of complaint, written records of terms of adjustment and disposition of complaint.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 CFR Chapter I, Part 713.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Implementation of NEA program for equal opportunity in employment and personnel operations; disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in legal size folder.

RETRIEVABILITY:

Retrievable by name.

SAFEGUARDS:

Maintained in lockable filing cabinets.

RETENTION AND DISPOSAL:

Disposition in accordance with GRS 1, Item 26.

SYSTEM MANAGER(S) AND ADDRESS:

Equal Employment Opportunity Officer, National Endowment for the Arts, 2401 E St., NW, Washington, D.C. 20506.

NOTIFICATION PROCEDURE:

See Title 45 CFR Part 1115.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained. NEA employees involved in the claim or proceeding.

NEA–5

SYSTEM NAME:

Grant Applications NEA–5.

SYSTEM LOCATION:

2401 E St., NW, Washington, D.C. 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals applying to the National Endowment for the Arts for financial assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant application, sample of work where appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 et seq.).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General Administration of grant review process; statistical research; congressional oversight and analysis of trends; disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Grant applications maintained in legal size folder, and related machine-readable files stored in an automated grants management system.

RETRIEVABILITY:

Indexed by name and application number.

SAFEGUARDS:

Records are maintained in a lockable file cabinet.

RETENTION AND DISPOSAL:

Unscheduled records, disposition to be determined.

SYSTEM MANAGER(S) AND ADDRESS:

Grants Officer, National Endowment for the Arts, Room 1144, 2401 E St., NW, Washington, D.C. 20506.

NOTIFICATION PROCEDURE:

See Title 45 CFR Part 1115.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

NEA–6

SYSTEM NAME:

Grants to Individuals NEA–6.

SYSTEM LOCATION:

Grants Office, 2401 E St., NW, Washington, D.C. 20506

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals receiving grant awards (fellowships) from the National Endowment for the Arts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant application, including sample of work where appropriate, award notification letter, grant award acceptance agreement, payment schedule, relevant correspondence, final report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 et seq.).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General administration of grant review and award process; statistical research; congressional oversight and analysis of trends; disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Grant case file maintained in legal size folder, and related machine-readable file stored in an automated grants management system.

RETRIEVABILITY:

Indexed by name and grant number.

SAFEGUARDS:

Records are maintained in lockable filing cabinets.

RETENTION AND DISPOSAL:

Unscheduled records, disposition to be determined.

SYSTEM MANAGER(S) AND ADDRESS:

Grants Officer, National Endowment for the Arts, Room 1144, 2401 E St., NW, Washington, D.C. 20506.

NOTIFICATION PROCEDURE:

See Title 45 CFR Part 1115.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained. NEA employees involved in the administration of the grant.

NEA–7

SYSTEM NAME:

Personnel Records NEA–7.

SYSTEM LOCATION:

Personnel Division, Room W–717, 2401 E St., NW, Washington, D.C. 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NEA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains copies of official peronnel records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 et seq.).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Identification of NEA employees and their personnel records. Used for internal reporting; also referred to any appropriate agency, private organization or official in the course of an employment or security clearance investigation; disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of an individual about whom the record is maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in letter size folder.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Stored in lockable file cabinets.

RETENTION AND DISPOSAL:

Retained during course of employment and for one month subsequent to termination thereof; thereafter sent to St. Louis, Mo.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Officer, National Endowment for the Arts, Room W–711, 2401 E St., NW, Washington, D.C. 20506.

NOTIFICATION PROCEDURE:

See Title 45 CFR Part 1115.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, NEA employees.

NEA–8

SYSTEM NAME:

Fellows NEA–8.

SYSTEM LOCATION:

Fellowship Program, Rm. 1323, 2401 E St., NW, Washington, D.C. 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present participants in the National Endowment Fellowship Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains resume and essay submitted by candidate, letters of recommendation, grant award letter, cash request, correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 et seq.).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Identification of past and present participants in the National Endowment Fellowship Program, general reference purposes; disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in legal size folder.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records are maintained in lockable filing cabinets.

RETENTION AND DISPOSAL:

Unscheduled records, disposition to be determined.

SYSTEM MANAGER(S) AND ADDRESS:

Fellowship Program Officer, National Endowment for the Arts, Room 1323, 2401 E St., NW, Washington, D.C. 20506.

NOTIFICATION PROCEDURE:

See Title 45 CFR Part 1115.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, reference sources for individual.

[FR Doc. 81-22290 Filed 7-30-81; 8:45 am]

BILLING CODE 7537-01-M

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at 806 15th Street, N.W., Washington, DC 20506.

1.Date: August 21, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 314

Program: This meeting will review Independent Study and Research applications in American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1982.

2.Date: August 25, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 314

Program: This meeting will review Independent Study and Research Fellowship applications in U.S. History to the Early 20th century and Latin American History, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1982.

3.Date: August 26, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 314

Program: This meeting will review Independent Study and Research applications in European and Near Eastern History, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1982.

4.Date: August 28, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 314

Program: This meeting will review Independent Study and Research applications in Music and Dance, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1982.

5.Date: September 16, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 314

Program: This meeting will review Fellowships for College Teachers applications in Modern British and American Literature, Linguistics, Composition and Rhetoric, and Speech and Communications, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1982.

The proposed meetings 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 a discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose,

(1) Trade secrets and commerical or financial information obtained from a person and privileged or confidential;

(2) Information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(3) Information the disclosure of which would significantly frustrate implementation of proposed agency action;

pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Codes.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, or call (202) 724-0367.

V. J. Loughnan,

Acting Advisory Committee Management Officer.

[FR Doc. 81-22409 Filed 7-30-81; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-289]

Metropolitan Edison; et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 68 to Facility Operating License No. DPR-50, issued to Metropolitan Edison Company, Jersey Central Power and Light Company, and Pennsylvania Electric Company (the licensees), which revised Techincal Specifications for operation of the Three Mile Island Nuclear Station, Unit No. 1 (the facility) located in Dauphin County, Pennsylvania. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications for the facility to extend the surveillance period for some of the equipment and systems from February 1981 to the restart date of TMI-1 and to delete the requirement to perform the emergency core cooling system emergency loading sequence test prior to testing equipment in the high pressure injection system. The extension in the surveillance period applies to the current shutdown period only.

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 in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment 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 April 24, 1981 and June 15, 1981, (2) Amendment No. 68 to License No. DPR-50, 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. 20555, and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth 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, Division of Licensing.

Dated at Bethesda, Maryland, this 20th day of July 1981.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 81-22386 Filed 7-30-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-387 and 50-388]

Pennsylvania Power & Light Co. and Allegheny Electric Cooperative Inc. (Susquehanna Steam Electric Station, Units 1 and 2); Memorandum and Order

July 27, 1981.

The purpose of this memorandum and order is to establish a schedule for a continuation of the prehearing conference held under 10 CFR 2.752 at Wilkes-Barre, Pennsylvania, to set the time for a hearing to commence in these proceedings, and to rule on other matters discussed at the conference.

In the sessions of the preharing conference on July 22–23, 1981, a review of the contentions admitted to this proceeding—not eliminated through approval of motions for summary judgment—resulted in the withdrawal of contention 13 by its sponsor, Marsh *et al.*, and indications that several other contentions may be withdrawn when the intervenors reviewed recent safety and environmental reports filed by the Staff. To assure a thorough consideration of contentions to be the subject of hearings in this proceeding, the parties *are directed* to continue their considerations and consultations on the remaining contentions at an informal session in Wilkes-Barre, Pennsylvania on August 11, 1981. The Board will reconvene the preharing conference on August 12, 1981, to review the results of the parties efforts. Both sessions will begin at 9:00 a.m. in the Gennetti Best Western Motor Inn at 77 E. Market Street in Wilkes-Barre. A site visit (for Board members and three representatives of each intervenor) to the facility at Berwick has been scheduled for the afternoon of August 12.

A hearing in this proceeding will commence on October 6, 1981 and a schedule of obligations on all parties in preparation for the hearing, which was discussed during the prehearing session, will be forthcoming in a few days.

The motion of the Citizens Against Nuclear Danger (CAND) to conditionally dismiss the Pennsylvania Bureau of Radiation from this proceeding because of an alleged limited participation *is denied.* As a representative of an interested State, the Bureau is not required to take a position in the proceeding, 10 CFR 2.715(c). However, as advised during the conference session, the Board will require the State's representative to indicate at the next session the particular matters—other than the issues already admitted—that it desires to participate on. The motion of the Commonwealth of Pennsylvania dated June 26, 1981 to substitute the Commonwealth as the representative of the State in place of the Bureau of Radiation Protection *is approved.*

The motion of the Staff dated May 28, 1981 for reconsideration and reversal of the Board's Order of March 16, 1981, as it related to summary disposition of Contention 2 (Chlorine), *is denied.* However, since the Board's Order admitted new information by the intervenor, CAND, as a basis for its denial, the Board views the Staff's motion for reconsideration as a showing of good cause for a limited additional period of discovery with respect to this information and contention. Accordingly, the Board authorizes a period of ten (10) days of discovery and ten (10) days for a response for the chlorine portion of Contention 2. The ten-day period for discovery starts from service of this Order and the response from receipt of the discovery request.

The Board discussed a schedule at the conference for new contentions, modification of contentions and additional discovery requests. New contentions and any modifications of contentions based on new information must be submitted to the Board for approval within ten (10) days of the receipt of such new information. The motions submitted must identify the new information specifically and not merely refer to a report or document. Answers to such motions must be received by the Chairman of the Board within fifteen (15) days of the service of the motions. Additional discovery requests, whether based on new or modified contentions or on new information, must identify its basis specifically and be filed directly with the party being discovered within fifteen (15) days after service of the Board's approval of a new or modified contention or new information. Responses must be filed within fifteen (15) days of service of such requests. Objections to new discovery requests must be filed within ten (10) days of service of the request. Motions to compel discovery must be filed within five (5) days of a failure to respond and answers to such motions within five (5) days of service of the motion to compel.

Although the Board leaves the filing of motions for summary judgment to the discretion of the parties, it encourages their filing as much in advance of the hearing as possible. The Board also directs the parties to submit cross-examination plans to the Board and recommends to the intervenors the selection of lead intervenors for their contentions, which selection can be accomplished at their session on August 11.

It is so ordered:

Dated at Bethesda, Maryland this 27th day of July 1981.

For the Atomic Safety and Licensing Board.

James P. Gleason,

Chairman, Administrative Judge.

[FR Doc. 81-22387 Filed 7-30-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445 and 50-446]

Texas Utilities Generating Co., et al.; Availability of Safety Evaluation Report for the Comanche Peak Steam Electric Station, Units 1 and 2

The Office of Nuclear Reactor Regulation has published its Safety Evaluation Report on the proposed operation of the Comanche Peak Steam Electric Station, Units 1 and 2 located in Somervell County near Glen Rose, Texas. Texas Utilities Generating Company is lead applicant and agent for the co-owners, Dallas Power and Light Company, Texas Electric Service Company, Texas Power and Light Company, Brazos Electric Power Cooperative, Inc., and Texas Municipal Power Agency. Texas Utilities Generating Company will operate the station for the co-owners. Notice of receipt of the application for facility operating licenses for the Comanche Peak Steam Electric Station, Units 1 and 2 was published in the **Federal Register** on May 12, 1978 (43 FR 20583).

The reporting is being referred to the Attorney Committee on Reactor Safeguards and is being made available at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Somervell County Public Library, on the Square, P.O. Box 1417, Glen Rose, Texas 76043 for inspection and copying.

The report (Document No. NUREG–0797) can also be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland this 24th day of July 1981.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 81-22388 Filed 7-30-81; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENT'S COMMISSION ON HOSTAGE COMPENSATION

[Public Notice CM-8/429]

Individual Former Hostages; Specific Matters; Meeting

Notice has previously been given that the President's Commission on Hostage Compensation will meet on August 6 and 7, 1981, beginning at 9:00 a.m. in Room 1107 of the Department of State. See 46 FR 35831, July 10, 1981.

It has recently become apparent that at these meetings, the Commission may wish to discuss specific matters pertaining to individual former hostages, the public disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as matters concerning ongoing civil litigation. Accordingly, a determination has been made by the Under Secretary of State for Management that, in the discretion of the Commission, a portion or portions of these meetings may be closed to the public in accordance with Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App. I), with reference to the Government in the Sunshine Act (5 U.S.C. 552b(c) (6) and (10)). In view of the August 20 deadline for completion of the Commission's work, it was not possible to provide additional advance notice of the requirement for closed meetings.

Dated: July 29, 1981.

John R. Davis, Jr.,

Executive Secretary.

[FR Doc. 81-22550 Filed 7-30-81; 8:45 am]

BILLING CODE 4710-15-M

SECURITIES AND EXCHANGE COMMISSION

Philadelphia Stock Exchange, Inc.; Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

July 24, 1981.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Dow Jones & Company, Inc., Common Stock, $1 Par Value (File No. 7-5984)

National Medical Care, Inc., Common Stock, $.20 Par Value (File No. 7-5985)

The Pillsbury Co., Common Stock, No Par Value (File No. 7-5986)

Scientific-Atlanta, Inc., Common Stock, $.50 Par Value (File No. 7-5987)

Wendy's International, Inc., Common Stock, $.10 Par Value (File No. 7-5988)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 14, 1981 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-22311 Filed 7-30-81; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/428]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting on September 10, 1981, of the Working Group on International Data Flows of the Advisory Committee on International Investment, Technology, and Development. The Working Group will meet from 10:00 a.m. to noon. The meeting will be held in the Loy Henderson Conference Room of the State Department, 2201 C Street, NW., Washington, D.C. 20520. The meeting will be open to the public.

The purpose of the meeting will be to review the progress made in publicizing the OECD Privacy Guidelines and to discuss preparations for the September 14-18 Meeting of the OECD Working Party on Information, Computers and Communications Policy.

Requests for further information on the meeting should be directed to Philip T. Lincoln, Jr., Department of State, Office of Investment Affairs, Bureau of Economic and Business Affairs, Washington, D.C. 20520. He may be reached by telephone on (area code 202) 632-2728.

Members of the public wishing to attend the meeting must contact Mr. Lincoln's office in order to arrange entrance to the State Department building.

The Chairman of the Working Group, will as time permits, entertain oral comments from members of the public attending the meeting.

Dated: July 21, 1981.

Philip T. Lincoln, Jr.,

Executive Secretary.

[FR Doc. 81-22314 Filed 7-30-81; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/427]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Meeting

The SOLAS Working Group on Bulk Chemicals will conduct an open meeting on August 31, 1981, at 9:30 A.M., in Room 1103 of the Coast Guard Headquarters Building, 2100 Second Street, S.W., Washington, D.C. 20593.

The purpose of this meeting will be to discuss the agenda for the ninth session of the IMCO Subcommittee on Bulk Chemicals. Major items on the agenda are:

a. Carriage of mixtures of substances of Annex I and Annex II to MARPOL 73/78.

b. Procedures and arrangements for the discharge of noxious liquid substances.

c. Review and updating of the Gas Carrier Codes.

d. Harmonization of the Bulk Chemical Code with the Gas Carrier Code.

e. Overflow control of liquid chemicals and liquified gases.

f. Inert gas requirements for chemical tankers.

For further information contact Mr. Frits Wybenga, U.S. Coast Guard (G-MHM-1), Washington, D.C. 20593. Telephone (202) 426-1217.

Dated: July 20, 1981.

James A. Treichel,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 81-22313 Filed 7-30-81; 8:45 am]

BILLING CODE 4710-07-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 147
Friday, July 31, 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

FEDERAL COMMUNICATIONS COMMISSION.

Deletion of Agenda Item From July 30th Open Meeting.

The following item has been deleted at the request of the Chief, Cable Television Bureau from the list of agenda items scheduled for consideration at the July 30, 1981 Open Meeting, and previously listed in the Commission's Notice of July 23, 1981.

Agenda, Item No., and Subject

Cable Television—5—"Joint Petition for Partial Reconsideration" (CSR-1671, CSR-1672) filed April 8, 1981, by The Standard Corporation and by Communications Investment Corporation. The Standard Corporation and Communications Investment Corporation seek partial reconsideration of the Commission's decision in *The Standard Corporation*, FCC 81-88, 85 FCC 2d —— (1981), partially granting the corporations' requested tax certificates.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affiars Office, telephone number (202) 254-7674.

Issued: July 27, 1981.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S 1164-81 Filed 7-29-81; 9:57 am]

BILLING CODE 6712-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3.20 p.m. on Tuesday, July 28, 1981, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matter:

Suspension of trading in the securities of an insured State nonmember bank pursuant to sections 12(i) and 12(k) of the Securities Exchange Act of 1934

In calling the meeting, the Board of Directors determined, on motion of Director William M. Isaac (Appointee), seconded by Mr. H. Joe Selby, acting in the place and stead of Director Charles E. Lord (Acting Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the meeting was exempt from the open meeting requirements of the "Government in the Sunshine Act" by authority of subsections (c)(8), (c)(9)(A)(i), and (c)(9)(A)(ii) thereof (5 U.S.C. 552b(c)(8), (c)(9)(A)(i), and (c)(9)(A)(ii)).

Dated: July 29, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1165-81 Filed 7-29-81; 11:07 am]

BILLING CODE 6714-01-M

3

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 10 a.m., Thursday, July 30, 1981.

PLACE: 1700 G Street, N.W., board room, sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6679).

MATTERS TO BE CONSIDERED: The following item has been added to the open portion of the Bank Board meeting:

Geographic Restrictions Regarding Remote Service Units Operations.

No. 521, July 30, 1981.

[S 1163-81 Filed 7-28-81; 4:21 pm]

BILLING CODE 6720-01-M

4

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Wednesday, August 5, 1981.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed cost-saving initiatives for Federal Reserve Banks.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. 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 29, 1981.

James McAfee,

Assistant Secretary of the Board.

[S-1166-81 Filed 7-29-81; 1:09 pm]

BILLING CODE 6210-01-M

5

POSTAL RATE COMMISSION.

TIME AND DATE: 10:30 a.m., Monday, August 3, 1981.

PLACE: Conference Room, Room 500, 2000 L Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: Commission Budget for FY 1982.

CONTACT PERSON FOR MORE INFORMATION: Dennis Watson, Information Officer, Postal Rate Commission, Room 500, 2000 L Street, N.W., Washington, D.C. 20268, Telephone (202) 254-5614.

[S-1167-81 Filed 7-29-81; 2:30 pm]

BILLING CODE 7715-01-M

federal register

Friday
July 31, 1981

Part II

Department of Agriculture

Food Safety and Inspection Service

Standards and Labeling Requirements for Mechanically Processed (Species) Product and Products in Which It Is Used

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service G2T11

9 CFR Parts 317, 318, and 319

[Docket No. 81-016P]

Standards and Labeling Requirements for Mechanically Processed (Species) Product and Products in Which It Is Used

AGENCY: Food Safety and Inspection Service (FSIS), USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture is proposing to amend the Federal meat inspection regulations to (1) modify the definition and standard (including parameters for measuring compliance) and permitted uses for Mechanically Processed (Species) Product (MP(S)P)—a product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses—and the labeling requirements for meat food products in which it is used as an ingredient and (2) establish labeling requirements for such product. Specifically, the Department is proposing to amend the Federal meat inspection regulations to (1) change the name of the product to one which is less burdensome and more descriptive of its characteristics; (2) establish two categories of product: one which meets the current fat and protein content requirements and a second as to which there are no fat or protein requirements; (3) permit use of the second category of product only in meat food products subject to regulatory definitions and standards that limit fat content; (4) replace the limit on the amount of product meeting fat and protein content requirements which may be used with limits on the amount of calcium such product may contain when it is used at various levels; (5) delete the requirement that the names of all meat food products containing the product must be qualified by a phrase indicating its presence, but consider retaining this requirement in particular situations on the basis of information submitted in this rulemaking; (6) replace the requirement that the names of meat food products containing the product must be further qualified to indicate the amount of powdered bone they contain with a requirement that their labels declare calcium content as part of a nutrition label—or, if a meat food product does not bear nutrition labeling, in a statement in conjunction with the ingredients list—whenever the amount so declared would differ from the amount that would be declared if such meat food product contained only hand deboned ingredients; and (7) add labeling requirements for the product itself where this is necessary to assure compliance with the regulations. This proposal is based on data, information, and arguments accumulated by and sumitted to the Department since the MP(S)P regulations were promulgated on June 20, 1978 and the Department's review and reevaluation of these regulations.

DATE: Comments must be received on or before October 29, 1981.

ADDRESSES: Written comments to: Regulations Coordination Division, Attn: Annie Johnson, FSIS Hearing Clerk, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250. Information as to which confidentiality is being requested to: John W. McCutcheon, Freedom of Information Act Officer, Food Safety and Inspection Service, Room 327-E, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6525. (See also Comments under Supplementary Information.)

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

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as a major rule pursuant to section 1(b)(1) of that order because it is likely to result in an annual effect on the economy of $100 million or more. The Department's review is reported in its Preliminary Regulatory Impact Analysis (PRIA), which is published in its entirety as an appendix to this proposal. The PRIA also satisfies the analysis requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), which deals with the impact of regulation on small entities.

Comments

Interested persons are invited to submit written comments concerning this proposal. Such comments must be sent in duplicate to the FSIS Hearing Clerk. They should bear a reference to the docket number located in the heading of this document. All written submissions made pursuant to this notice will be made available for public inspection between 8:00 a.m. and 4:30 p.m., Monday through Friday, in the Regulations Coordination Division, Room 2637, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, D.C., unless the submission is made to Mr. McCutcheon, Freedom of Information Act Officer, with a request that it be held in confidence. Persons submitting commercial or financial information that they wish to be held in confidence should include with it a statement of the reasons why they believe the information, or portions of the information, should not be made available for public inspection. A determination will be made in each instance where confidentiality is requested as to whether an adequate showing in support of such request has been made. Confidential treatment shall be granted for trade secrets and for commercial or financial information that is privileged or confidential; i.e., where the disclosure of such information would be likely to cause substantial competitive harm to the submitter (see 7 CFR 1.27(c)). If it is determined that such a showing has been made, the material will not be made available for public inspection. If the submission does not demonstrate the potential for substantial competitive damage as a result of disclosure, the submitter will be so notified and will be given the opportunity to withdraw the information. No information as to which confidentiality has been requested will be released pursuant to a Freedom of Information Act request until the submitter of such information has been notified of the request and given an opportunity to discuss the issues presented with appropriate Department officials.

All documents referred to in this notice also will be made available for public inspection between 8:00 a.m. and 4:30 p.m., Monday through Friday, in the Regulations Coordination Division, Room 2637, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, D.C.

[1] Pursuant to the reorganizational plans outlined in USDA Secretary's Memo 1030-1, issued June 19, 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.

Purpose of the Proposal

This proposal would amend the regulatory requirements for Mechanically Processed (Species) Product (MP(S)P)—a product that is made by the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses—and for the finished meat food products in which this product is used as an ingredient. The Department promulgated these requirements on June 20, 1978 (43 FR 26416) pursuant to its statutory responsibility to prevent the preparation and distribution in commerce of meat and meat food products which are adulterated or misbranded or not properly labeled. See sections 1(m) and (n) and 7 of the Federal Meat Inspection Act (21 U.S.C. 601(m) and (n), 607). Since that time, the Department has accumulated and received data, information, and arguments, described below, which have led it to review these requirements and proposes that they be revised.

The amount of MP(S)P produced since the promulgation of the current regulations has been quite small; and it appears that MP(S)P is not being produced at all for use as an ingredient in meat food products sold at retail, despite the availability of the technology and raw materials. As a result, a potential food source is not being made available to the general public. The red meat industry has contended that its failure to market products containing MP(S)P is due to regulatory requirements which go beyond what is necessary to protect the public, and it has asked the Department to reconsider these requirements in light of additional information industry has compiled since the completion of the MP(S)P rulemaking in 1978. This position was advanced most recently in a February 1981 petition by the Pacific Coast Meat Association (PCMA), a regional trade association of meat packing and processing companies, and the American Meat Institute (AMI), a national trade association of meat packing and processing companies, on behalf of their members. The petition argues that PCMA's and AMI's members "are effectively precluded from producing or marketing mechanically deboned beef, pork, or veal or lamb by the misleading labeling and the unreasonable compositional standards imposed by" §§ 317.2(j)(13) and 319.5(a)) of the Federal meat inspection regulations (9 CFR 317.2(j)(13) and 319.5(a)). In support of their request that these regulations be amended, PCMA and AMI submitted two types of evidence to the Department: a report on a series of consumer focus group sessions exploring attitudes towards various types of meat food product labeling and an analysis of the economic impacts of the MP(S)P regulations In addition, these regulations were on the Vice President's March 25, 1981 list of existing regulations which were to be reviewed in accordance with the principles of Executive Order 12291.

The Department has reviewed the arguments in the PCMA–AMI petition and the accompanying documents. Based on this information and the Department's review and reevaluation of these regulations in accordance with the principles of Executive Order 12291, and in view of the importance of taking advantage or all safe and wholesome sources of food, the Department believes that certain of the MP(S)P regulations can and should be amended to facilitate the production and use of MP(S)P while continuing to protect the public against adulterated and misbranded products. Specifically, the Department is proposing to amend the Federal meat inspection regulations to (1) change the name of the product to one which is less burdensome and more descriptive of its characteristics; (2) establish two categories of product: one which meets the current fat and protein content requirements and a second as to which there are no fat or protein content requirements; (3) permit use of the second category of product only in meat food products subject to regulatory definitions and standards that limit fat content; (4) replace the limit on the amount of product meeting fat and protein content requirements which may be used with limits on the amount of calcium such product may contain (as a measure of its bone content) when it is used at various levels; (5) delete the requirement that the names of all meat food products containing the product must be qualified by a phrase indicating its presence, but consider retaining this requirement in particular situations on the basis of information submitted in this rulemaking; (6) replace the requirement that the names of meat food products containing the product must be further qualified to indicate the amount of powdered bone they contain with a requirement that their labels declare calcium content as part of a nutrition label—or, if a meat food product does not bear nutrition labeling, in a statement in conjunction with the ingredients list—whenever the amount so declared would differ from the amount that would be declared if such meat food product contained only hand deboned ingredients; and (7) add labeling requirements for the product itself where this is necessary to assure compliance with the regulations.

The proposal also reflects the Department's continuing belief that (1) the product differs materially from "meat" and should be subject to its own definition and standard and declared as a distinctive ingredient; (2) limits on bone particle size, bone content, and protein quality as well as handling controls and production under an approved quality control program are necessary to assure the product's safety and quality; and (3) use of the product should not be permitted in certain meat food products. However the Department is proposing additional minor changes in certain of the provisions embodying these requirements, primarily for purposes of clarification and simplification.

Judgments as to the appropriate definition and standard for the product resulting from the mechanical separation process and as to how its use as an ingredient should be reflected on the labels of meat food products involve difficult and controversial issues. Therefore, the Department urges the public to participate in this reevaluation of certain of the MP(S)P regulations; and it is publishing the PCMA–AMI petition and supporting documents as well as its own Preliminary Regulatory Impact Analysis as appendices to this proposal in order to facilitate comments on the proposal and the issues raised in this notice. Comments will be accepted until October 29, 1981.

Historical Background

The production, use, and labeling of MP(S)P and the labeling of products in which MP(S)P is used as an ingredient are regulated by §§ 317.2(j)(13), 318.18, 319.5, and 319.6 and the definitions and standards of identity or composition for various meat food products in Part 319 of the Federal meat inspection regulations (9 CFR 317.2(j)(13), 318.18, 319.5, 319.6, and Part 319). These requirements were promulgated on June 20, 1978 and became effective on July 20, 1978. 43 FR 26416.

1. Interim Regulation and First Proposal

The MP(S)P regulations are the result of a rulemaking that began on April 27, 1976 with the publication of a notice of proposed rulemaking titled "Definitions of Meat and Classes of Meat, Permitted Uses, and Labeling Requirements." 41 FR 17560. That proposed rulemaking included, among other things, a proposal for defining and permitting the manufacture of the following three types of product resulting from the mechanical

separation and removal of most of the bone from attached skeletal tissue: "mechanically Deboned Meat," "Mechanically Deboned Meat for Processing," and "Mechanically Deboned Meat for Rendering." Different nutritional parameters were proposed for the first two types of product. None were proposed for the third type, which, as such, was not to be used in the formulation of meat food products. No limit was proposed on the amount of the first type of product that could be used in finished products; and the second type was to be limited to 20 percent of the total meat, meat byproducts, poultry products, and poultry meat used in the formulation. The proposal also specified the meat food products in which these two types of product were to be permitted. There were more than 1,100 public comments on this proposal, a number of which raised various health and safety questions.

On April 27, 1976, an interim regulation that included standards for the use of Mechanically Deboned Meat (MDM) also was published. This regulation was intended to be effective pending final rulemaking on the proposal, unless rescinded earlier. 41 FR 17535. The interim regulation was challenged by a coalition of various consumer oriented public interest groups, state officials, and a member of Congress in *Community Nutrition Institute, et al. v. Butz (CNI v. Butz)*, Civil Action No. 76-1585 (D.D.C., decided Sept. 10, 1976). The Court in *CNI v. Butz* held that the promulgation of the interim regulation was in violation of the Administrative Procedure Act and issued a preliminary injuction enjoining the Secretary from giving further effect to the interim regulation with respect to MDM.

In the Court's opinion, MDM was not "meat" as traditionally defined because of its bone particle content. Concluding that these bone particles must be regarded as a substance added during mechanical processing, the Court found that the Secretary had not considered adequately the health effects of MDM. The Court indicated that until these health questions were adequately assessed, MDM had to be considered as a substance which may injure health and, therefore, adulterated and an adulterant. In addition, it appeared to the Court that the interim regulation permitted misbranding because a product that contained MDM would have a higher calcium content than a comparable product without MDM. Since the public expects the "usual product", it would be misled by the labeling permitted by the regulation. This could prove especially harmful to persons on calcium-restricted diets, who would think that the product contained no more than the usual amount of calcium.

2. Panel Evaluation of Health and Safety Aspects

In order to respond to the health and safety questions raised by the Court, the Department initiated an analytical program to develop data on the amounts of nutrients and substances of concern which might be present in MDM. To evaluate findings from this analytical program and pertinent information and data gathered from other sources, an interagency panel of Government scientists was convened. This Panel consisted of experts in a wide range of subject areas dealing with health and safety aspects of foods. The Panel was asked to respond to questions which had been raised by the Court, questions in the comments that had been filed on the proposed rulemaking, and other issues which became evident during its deliberation.

The Panel's conclusions and recommendations were published in the reports titled "Health and Safety Aspects of the Use of Mechanically Deboned Meat, Volume I—Final Report and Recommendations, Select Panel" and "Health and Safety Aspects of the Use of Mechanically Deboned Meat, Volume II—Background Materials and Details of Data." The final report basically consists of a series of subcommittee reports, which were authored by persons having special expertise in the various subject fields and unanimously accepted by the Panel as a whole, and the conclusions and recommendations of the Panel. Both volumes were made available to the public in connection with the Tissue from Ground Bone proposal discussed below. 42 FR 54437, 54439; 43 FR 26416, 26417.

The following are the Panel's conclusions and recommendations, as supplemented by certain of the subcommittees' findings:

A. Bone particle size as obtained with mechanical deboners currently available presents no hazards to health. It seems likely that the bone particles will be dissolved by the stomach acid and provide an additional source of calcium. Non-digested particles, if they occur, will provide additional "bulk" to the diet, which is considered to be beneficial. However, the Panel recommended that limits for maximum particle size be included in any regulation to be promulgated allowing the preparation in commerce of MDM. The subcommittee believed it desirable to institute quality control measures to limit particle size to those levels presently associated with good manufacturing practice.

B. A slight nutritional benefit is to be expected for most people from the calcium in MDM, especially for persons whose customary intake of calcium falls below the Recommended Dietary Allowance. The calcium which would be added to the diet by MDM is not so great in amount as to pose a hazard to the health of most people except for those persons who are hyperabsorbers of calcium and likely already to be under medical supervision to limit their calcium intakes. The subcommittee suggested appropriate labeling to indicate that meat food products contain calcium so that the small percentage of the population which may require a low calcium intake for medical reasons would have the choice to avoid purchasing them.

C. The fluoride content of MDM poses no health problem for adults. Fluoride intakes of children need to be controlled more closely than intakes of adults in order to avoid mottling of teeth. Since little is known about the fluoride intake of children, caution is advised. Data on projected consumption of MDM show that intakes of flouride from MDM would be negligible, even for children consuming much higher than average quantities of MDM with a high flouride content. MDM in the Panel's judgment presents no problem for children. However, flouride intake of infants is known to be high. The Panel, therefore, concluded that prudence dictates that MDM not be incorporated into baby and junior foods at present. This recommendation was based primarily on lack of information rather than evidence of a hazard and should be subject to further evaluation as data are gathered. Long term data on the fluoride content of MDM are not available at present, and the fluoride content of MDM may vary in different localities and may also depend on the age of the cattle used.

D. The Panel concurred with its subcommittee's evaluation that, based on currently available data and relative to the magnitude of other environmental sources of lead, the amount of lead which would be provided by MDM is toxicologically insignificant for children and adults.

E. Amounts of cadmium in MDM are so small as to be not detectable by current analytical procedures and are of no public health significance.

F. Selenium was judged not to be health problem. There is no evidence to

indicate that selenium concentrates in bone.

G. Increases in dietary intakes of strontium-90 from use of MDM would be negligible, amounting to about a 1 percent increase in exposures which are already well below tolerable limits. MDM poses no health hazard in regard to strontium-90.

H. Cobalt, copper, iron, nickel, zinc, arsenic, and mercury pose no potential problems in relation to use of MDM. Consumption data indicate that MDM would probably provide about 1 percent of the expected daily intake of cobalt. Additional iron from MDM would be in the order of 2.5 percent of the total iron intake and should be readily available to the body. Zinc content of MDM is essentially the same as zinc in hand deboned meat, and use of MDM should not affect bioavailability of zinc from other dietary sources. Arsenic has not been found in mechanically deboned poultry, and poultry would be expected to have greater relative intakes of arsenic than red meat animals. Therefore, arsenic should present no problem in MDM. Mercury does not accumulate in bone.

I. Chlorinated hydrocarbon residues present no special problem in MDM because if present in measurable amounts, they are found in quantities well below established tolerance or action limits.

J. Data presently available on the lipid spectrum of MDM show that it is comparable to the lipid pattern found in hand deboned meats. Available data, while limited, did not suggest that use of MDM will lead to any appreciable increase in dietary cholesterol or other lipids thought to be involved in pathological states in humans as compared with the consumption of other meat food products with similar fat contents. However, because of concern over the general problem of excessive intakes of fat and their effect on health, the Panel recommended that limits be placed on the fat content of MDM, on the basis of good manufacturing practices, and that limits also be placed on the fat content of products in which MDM could be used.

K. Proposed standards for protein content and quality (PER) are reasonable. Efforts should be continued to find more rapid and economical methods for monitoring protein quality to replace the cumbersome PER assay.

L. The microbiology of MDM presents no unique hazards and should not be a problem if good manufacturing practices and quality control programs are employed.

M. Tetracyclines accumulate in the bones of young animals, and a recent German study has found tetracyclines in calf bones. The amounts are such that even at the highest level found, residues in products made with MDM derived from calf bones likely would be within present permitted tolerances. The U.S. slaughters comparatively few calves, and it is unlikely that there will be calf MDM. Tetracyclines in older cattle and swine present no problem. Though it is apparent that the use of tetracyclines in calves is on the decline in the United States, controls should be established to assure that if MDM is prepared from calves, it will not exceed established tolerances for such drugs. [Mechanically Processed Veal Product (MPVP), the product referred to as "calf MDM" in the health and safety report, has, in fact, been produced in limited amounts since the promulgation of the MP(S)P regulations. In 1979, MPVP was being produced by a small establishment that is no longer in business. The Department collected and analyzed three samples of this firm's product. Antibiotic residues were not detected in any of these samples. Another firm is now producing MPVP in small volume. Therefore, the Department has established a sampling program to alert it if any tetracycline residue problem develops. Thus far, after analysis of 18 samples, no antibiotic residues have been detected in the samples collected under this program.]

N. The Pannel agreed that MDM contained in food products should be so labeled in the ingredients statement so that persons who must stringently restrict calcium intake could avoid these products. The Panel further agreed that there was no need for health or safety reasons to make nutrition labeling mandatory for products containing MDM, although nutrition labeling of all food products should be encouraged.

O. The Panel recommended that efforts should be made to inform and educate health and medical professionals and the general public about dietary effects of use of MDM, especially in relation to calcium and fluoride.

P. The Panel recommended that further research should be encouraged on MDM when it is again produced commercially. Suggestions for research are given in several of the subcommittee reports.

3. Revised Proposal and Promulgation of a Final Rule

As a result of the Panel's conclusions and recommendations, *CNI* v. *Butz*, and the widespread public interest in and concern about MDM, a revised proposal was published on October 6, 1977 (42 FR 54437). This proposal included the following changes from the original proposal:

(1) The product would be named "Tissue From Ground Bone" (TFGB) and would be labeled "Tissue From Ground (Species) Bone" in the ingredients statement. The name of the processed product in which it was used would be qualified by the term "Tissue From Ground (Species) Bone Added."

(2) The product would be classified as a meat food product rather than as a class of meat.

(3) The number of classes of this type of product would be reduced from three to one. "Mechanically Deboned Meat" and "Mechanically Deboned Meat for Processing" would be combined because the single use limitation for TFGB would make separate classes unnecessary.

(4) The product would be limited to 20 percent of the total of all meat, meat byproducts, poultry products, and poultry meat used in a processed product.

(5) The product could not be used in baby (strained), junior, or toddler foods.

(6) The calculation of percent of essential amino acids would be in terms of total amino acids rather than in terms of total protein; and data on the essential amino acid tryptophan would be excluded in making this calculation.

(7) The size of the openings of any screens, sieves, or ports used in preparing TFGB could be no greater than 0.5 millimeter in diameter.

(8) The requirements for minimum protein and maximum fat would be set at 14 and 30 percent, respectively.

The Department received 4,537 comments on this proposal, including presentations made at a February 14, 1978 public hearing. More than four-fifths of these comments were from consumers. Significant numbers of comments were also received from industry members (including meat packers, machinery and equipment companies, food processors, food wholesalers, retail organizations, and trade groups), academia (including university faculty and students and high school teachers), professionals (including physicians, dentists, veterinarians, dietitians, attorneys, and food managers), farmers and farm-related organizations, and government agencies.

Many commenters expressed the opinion that products containing TFGB are safe. Numerous other commenters disagreed with this conclusion, questioning the effects of long term use, the presence of various substances, and microbiological safety. The Administrator of FSQS reviewed these concerns and, among other things,

determined that (1) the amount of calcium in MP(S)P should not exceed 0.75 percent (noting the significant, positive correlation between the calcium content and the flouride or lead content of bone) and (2) ingestion of bone particles from MP(S)P will not cause mechanical injury (noting that a number of studies had demonstrated that bone particles much larger than those found in MP(S)P are not likely to cause problems and are easily dissolved by gastric juices). In view of all of the information available, the Administrator concluded that, with the addition of special processing and storage requirements, the product is wholesome and safe for use in products other than baby, junior, and toddler foods.

Comments also were divided on the 20 percent use limit, with commenters disagreeing about the safety and quality of products containing greater and lesser amounts of TFGB; and there were objections to not permitting TFGB to be used in certain products. The Administrator determined that (1) the 20 percent use limit is optimum in that it allows for the use of MP(S)P without diminishing the quality and overall expected characteristics of products in which it is permitted and does not result in any health or safety problems and (2) permitting MP(S)P to be used in certain products was not warranted and would violate consumers' expectations about those products.

Numerous comments addressed economic aspects of the use of MP(S)P. For example, commenters expressed the belief that consumers would be paying for meat and getting bone and that prices would not stabilize or decrease as a result of this product's use. Concern was also expressed about economic effects on farmers, ranchers, and the labor force. In response to these objections, it was noted that labeling requirements would enable consumers to make cost comparisons between products containing and products not containing MP(S)P and that certain of the objections were not relevant to whether MP(S)P should be produced and distributed because the Administrator has no authority to prohibit the production of wholesome, unadulterated, and properly labeled products.

Many of the comments opposed adoption of the name "Tissue From Ground Bone", and the majority were against a requirement that a qualifying phrase be included with the product name. The Administrator agreed that "TFGB" could be misleading, as the product contains both meat and bone, including bone marrow, and "TFGB" would incorrectly indicate that it is made wholly from parts of bone. He considered other proposed names and determined not to adopt "Mechanically Deboned Meat" because "deboned" would incorrectly represent that the product does not contain bone or bone marrow and "meat" would incorrectly represent that the product consists solely of "meat." The Administrator went on to conclude that the product should be named "Mechanically Processed (species) Product", noting that the term "product" includes any substance from livestock which is capable of use as human food (9 CFR 301.2(ww)). He also concluded that, since MP(S)P is unique and would not be an expected ingredient, a qualifying statement should be added to finished product names to indicate its presence. Moreover, the Administrator believed the need of some individuals to limit their intake of calcium to be an important consideration and, therefore, finished product names should bear the additional qualifying statement, "Contains Up To ——% Powdered Bone". Finally, on the question of whether or not the product should be included in the ingredient statements of finished products, 264 comments favored inclusion and 406 opposed it, with most of those in the latter group taking the position that the product is meat and needs no further labeling except possibly for a statement on maximum calcium content. The requirement that MP(S)P be listed separately from "meat" in its order of predominance by weight was retained because MP(S)P is not meat and it would be a standardized product following publication of the rule.

The comments evidenced much disagreement about the proposed requirements for minimum protein content and protein quality and maximum fat content, and they included many objections that the protein and fat content limits would severely restrict the kinds of materials that could be used in preparing the product. The Administrator reviewed the points raised in the comments. Among other things, he could not agree that the protein content minimum would have this effect based on the information available to the Department. The Panel's reluctance to approve a product that would increase the total fat composition of meat products was noted, as well as the fact that there are not limitations on the fat content of a number of products in which MP(S)P is a suitable ingredient. These requirements were retained in order to assure a standardized product of high nutritional quality which could be used in a wide range of finished products. The Administrator also concluded that, in order not to discourage the development of different types of processing equipment, the proposed limit on the size of openings in the equipment through which the product is strained would be replaced with a limit on the size of bone particles that would result from use of the proposed procedures.

The comments also raised a number of other considerations, including the Department's ability to control production and use to ensure that the product would meet the regulatory requirements. The Administrator agreed that special requirements are needed to assure that establishments formulate MP(S)P to comply consistently with its precise requirements and thereby avoid false or misleading labeling. Therefore, the utilization of an approved quality control program was made a prerequisite to label approval and analytical requirements were specified.

In view of the Panel's findings and the views, data, and information available to the Department, and being mindful of the need for increasing food supplies and reducing waste of available proteinaceous nutritive materials, the Administrator concluded that production of MP(S)P should be allowed with the restrictions being imposed and amended Parts 317, 318, and 319 of the Federal meat inspection regulations (9 CFR Parts 317, 318, and 319) accordingly.

4. PCMA Petition

In April 1979, 9 months after the MP(S)P regulations became effective, the Pacific Coast Meat Association (PCMA), a regional trade association of meat packing and processing companies, petitioned the Department on behalf of its members and an ad hoc group of companies "which are effectively precluded from mechanically deboning beef, pork and veal by the negative labeling and unrealistic standards required by USDA regulations." PCMA requested that the Department (1) amend § 317.2(j)(13) of the regulations (9 CFR 317.2(j)(13)) by deleting the requirement that names of products containing MP(S)P be qualified to indicate the presence of that ingredient and by replacing the requirement that they be further qualified with a statement of powdered bone content with a declaration of calcium content either in the ingredients statement or as part of nutrition labeling and (2) amend § 319.5(a) of the regulations (9 CFR 319.5(a)) by deleting the minimum protein and maximum fat content provisions of the MP(S)P standard and leaving applicable the general fat to lean

ratio requirements that apply to meat trimmings.

PCMA stated that, based on data available to it, only 898,749 pounds of MP(S)P had been produced in the 7 months following publication of the regulations (17,040 from swine, 610,959 from cattle, and 270,750 from other sources, apparently calves), despite an investment in equipment of approximately $30 million by approximately 40 meat packers and processors; and the very few MP(S)P-containing products on the market are sold almost entirely to institutions, not retail consumers. (Data from the Department's meat inspection program indicate that approximately 2.3 million pounds of MP(S)P were produced in fiscal year 1979 and approximately 2.0 million pounds were produced in fiscal year 1980.) PCMA argued that the MP(S)P regulations should be changed immediately because (1) the failure to recover this product results in unnecessary additional consumer expenditures of $1 billion to $3 billion for meat and meat products and raises the price of all beef and pork cuts at least 3 to 4 cents per pound, (2) competitive poultry products without restrictive labeling and standards have gained significant marketplace acceptance, (3) the MP(S)P labeling provisions create misleading connotations of inferiority, and (4) the MP(S)P labeling and standards provisions are not supported by comments in the rulemaking record.

To support its contentions regarding economic impact, PCMA appended an economic evaluation that it has commissioned from Dr. Willard F. Williams, Professor of Agricultural Economics, Texas Tech University. Among other things, Dr. Williams estimated that existing machinery could produce 99 million pounds of MP(S)P per year (77 million from cattle and 22 million from swine). As regards labeling requirements, PCMA argued that (1) MP(S)P will virtually never be the most prominent ingredient in a product, the name MP(S)P is legalistic and unfamiliar to consumers, and consumers associate prominent legalistic label declarations with negative health implications; and (2) the powdered bone content declaration erroneously implies that this residue is detrimental to consumers, and it does not address the nutritional issue (sensitivity to calcium) raised by the Panel. PCMA also cited rulemaking comments opposing the minimum protein and maximum fat content requirements and argued that (1) the only feasible controls on fat composition are regulation of the end product and consumer taste preferences and (2) restrictions on ingredient composition only limit blending, a process which benefits consumers economically by allowing access to the most reasonably priced ingredients. Finally, PCMA contended that the review and approval of the health and safety aspects of MP(S)P during rulemaking and the huge inflationary impact of existing regulations make expedited rulemaking under 5 U.S.C. 553(b), without notice and comment procedure, appropriate.

The Department could not find sufficient grounds in PCMA's petition for granting the relief requested and, therefore, denied the petition in May 1979. PCMA was informed that while the Department does not want effectively to bar the marketing of any safe product or to inhibit the use of any process that may reduce industry costs and consumer prices, Dr. Williams' study did not support the petitioner's claim about the effects of current regulations. A copy of the Department's Economics, Statistics, and Cooperative Service's (ESCS's) review of the study was enclosed with the denial. The Department also indicated it was open to a resubmission of the PCMA's arguments with compelling evidence on (1) the effects on consumer preference of the current regulation and the amendments proposed by PCMA, (2) the economic effects of widespread use of MP(S)P, (3) industry's capability of producing and utilizing MP(S)P, and (4) whether the labeling proposed by PCMA would be false or misleading to any purchasers. The Department emphasized that the use of MP(S)P presents substantial problems of consumer understanding and education, citing the test for labeling set out in *Federation of Homemakers v. Hardin*, 328 F. Supp. 181 (D.D.C. 1971), *aff'd*, 466 F. 2d 462 (D.C. Cir. 1972), and affirming the Department's belief that the current labeling provides information necessary for informed choice and is the best available alternative given present knowledge.

In June 1979, PCMA resubmitted its request along with a further explanation of its position, Dr. Williams' comments on ESCS's review, and a response to the comments on the petition which had been submitted by the Community Nutrition Institute. Because the resubmitted petition presented no new evidence, the Department denied it in September 1979. PCMA was informed that until further evidence was submitted to alter the conclusions in the original denial, the Department believed that they continued to be valid.

5. PCMA–AMI Petition

In the middle of 1980, PCMA and the American Meat Institute (AMI), a national association of meat packing and processing companies, informed the Department that they were compiling information of the types to which the Department had referred in denying PCMA's 1979 petition. They submitted reports on the results of their efforts on February 11, 1981, along with a petition on behalf of their members to amend what they consider to be misleading labeling and unreasonable compositional requirements for MP(S)P which effectively preclude their members from producing or marketing various types of this product (beef, pork, veal, and lamb). Specifically, the PCMA–AMI petition requests that the Department (1) designate the ingredient resulting from the mechanical separation of meat from bone as "Mechanically Deboned Meat" ("MDM") because this name is clearer and more understandable to consumers than "Mechanically Processed (Species) Product" and it is the common or usual name by which the ingredient is known in the United States, (2) require that the presence of MDM be declared only in the ingredient statement, consistent with the general requirements for listing ingredients by their common or usual names in descending order of predominance (9 CFR 317.2(c)(2)), and delete the requirement that its presence be indicated in a phrase qualifying the names of meat food products in which it is used (9 CFR 317.2(j)(13)), (3) require a declaration of calcium content in the ingredient statement or as part of any nutrition label where the quantity of calcium in the meat portion of a meat food product is a nutritionally significant portion of the Recommended Daily Allowance (RDA) in lieu of the requirement that the names of meat food products be further qualified to indicate the amount of powdered bone they contain (9 CFR 317.2(j)(13)), (4) limit the total calcium content of the meat portion of a meat food product to no more than ¼ percent, in lieu of the present provision limiting use of MP(S)P to no more than 20 percent of the meat portion of any meat food product (9 CFR 319.6(b)), as a technology-forcing feature providing an incentive to lower powdered bone content, and (5) delete the minimum protein and maximum fat specifications in the product definition and standard (9 CFR 319.5(a)). The petition also recommends that the Department reexamine its limits on bone particle size (9 CFR 319.5(a)) in reference to proposed Canadian

requirements and requests that the wording of the regulations be changed to substitute "Mechanically Deboned Meat" for the meat food product called "Mechanically Processed (Species) Product" (9 CFR Part 319).

PCMA and AMI state that in view of the fact that meat packers and processors have invested approximately $30 million in equipment, one can only conclude that the limited production of MP(S)P—less than 1 percent of the potential supply—is attributable to the unresonably restrictive compositional and misleading labeling requirements; and they cite press reports of statements by the former Assistant Secretary of Agriculture for Food and Consumer Services and the former Associate Administrator of FSQS as indicating that the Department has reason to believe the burdensome nature of the present MP(S)P regulations requires a change. The petitioners believe that their proposed changes would have an extrordinarily positive environmental impact by making hundreds of millions of pounds of additional meat available with no added burden on agricultural production, by providing supplemental calcium, a needed nutrient, and by causing a huge conservation of valuable food resources. They also conclude that stifled production under existing regulations has an inflationary impact on meat prices and is costing U.S. citizens more than $500 million per year, and that their proposed modifications can remedy these effects without sacrificing any health or economic benefits provided by the current regulations.

As noted above, when the Department denied PCMA's 1979 petition, it indicated its willingness to reconsider the arguments raised therein if additional information in various areas were presented. In response, PCMA and AMI base their current petition on the following evidence, as well as the experience gained in the 32 months since the promulgation of the MP(S)P regulations: (1) "Consumer Focus Groups Concerning Mechanically Processed Meat Product," a September 1980 report by Market Research Services, Chicago, Illinois, on a qualitative market research study which was commissioned by PCMA to provide information regarding consumer preferences and perceptions (what the current label means to them, how they feel about it, and how they feel about the product) and (2) "Economic Impacts of Regulations on Mechanically Deboned Red Meats," a July 1980 report by J. Bruce Bullock and Clement E. Ward, Associate Professors, Department of Agricultural Economics, Oklahoma State University, an AMI-supported economic analysis, the objectives of which were to identify the nature and estimate the dollar value of the economic contribution that red meat mechanical deboning technology can have on the U.S. economy, to identify the nature of the economic impacts of regulations restricting production to less than economically feasible levels and estimate the economic costs of current regulations, and to develop information for determining the type of regulations (if any) needed to provide consumers with adequate information about the mechanically deboned red meat ingredient without preventing use of the efficiency-increasing technology.

Market Research Services reached the following conclusions on the basis of 8 focus group sessions lasting 1½ to 2 hours each and including a total of 69 women aged 25 to 54 from middle income households ($15,000 to $30,000) in 4 metropolitan markets (Chicago, Los Angeles, Atlanta, and Washington) who reported doing most of the grocery shopping for their households and frequent use of many types of processed meat products:

(1) The term mechanically processed beef product is confusing to consumers, and it fails to adequately inform them as to what the product MPBP actually is.

(2) Most consumers reacted negatively to the emphasis of powdered bone (even in very small amounts) on a product label.

(3) It appears that consumers probably will not purchase products containing MPBP if labeled according to the 1978 USDA reguations.

(4) Mechanically deboned (beef) appears to be a more favorable and informative term than mechanically processed (beef) product.

(5) Once they know that MPBP actually is beef that has been mechanically deboned, most consumers believe it is unnecessary to emphasize the mechanical deboning process if, in fact, the product is safe and nutritious. Consumers do feel strongly, however, about listing all the product ingredients in the ingredient statement. [Underlining deleted.]

Market Research Services also cautioned that their research is exploratory in nature and their findings must be seen as hypotheses which are not intended to be projectable to any larger population.

PCMA and AMI state that Market Research Services' conclusions should be read together with quantitative research prepared for the Gerber Products Company and previously submitted to the Department, which they believe confirms consumers' negative reactions to the format and content of existing labels for products containing MP(S)P. PCMA and AMI assert that these materials should satisfy the Department's request that compelling evidence regarding the effects of present and proposed regulations on consumer preference and whether the proposed labeling would be false or misleading to purchasers of the product accompany a resubmission of PCMA's arguments. PCMA's and AMI's arguments reflect the following positions: (1) "Mechanically Deboned Meat" is the common or usual ingredient name long used in the United States. (2) MDM is skeletal meat. Small and safe quantities of powdered bone do not decharacterize the ingredient's fundamental nature as "meat". Therefore, MDM as an ingredient is properly identified in the ingredient statement and requires no prominent qualifying phrase. (3) The powdered bone disclosure was required to provide information on calcium, a nutrient of which most consumers need more but intake of which some consumers should restrict. Consumers concerned about calcium content are best served by express information about calcium in the ingredient statement or, where nutrition labeling is used, in that labeling; however, such information should only be required where the amount of calcium is nutritionally significant.

The petitioners contend that the responses of the focus group participants support these positions. PCMA and AMI report that the participants responded in an informed way to "Mechanically Deboned Meat", but were totally confused by the prominent qualifying phrase "Mechanically Processed Beef Product", that they found the word "processed" to be meaningless, that they found the word "product" to be confusing, and that they were immediately able to understand the term "Mechanically Deboned Meat" as meaning meat separated from bone by a mechanical means. PCMA and AMI also report that the prominence given to the qualifying phrase indicating the presence of MP(S)P confused the focus group participants, arousing unwarranted apprehensions about a problem with the product without conveying information. In addition, PCMA and AMI report that after the focus group participants learned that MPBP is beef that has been mechanically deboned, most believed it is unnecessary to emphasize the mechanical deboning process so long as the ingredient is safe and nutritious and

it (like all product ingredients) is identified in the ingredient statement. Finally, the petitioners report that the focus group participants found the powdered bone content declaration derogatory and misleading (with many mistakenly thinking it referred to a separately added powdered bone ingredient and others mistakenly thinking detectable or hazardous hard pieces of bone would be present) and that they did not relate it to the presence of calcium.

Drs. Bullock and Ward studied the potential demand and supply for beef and pork product produced by mechanical deboning, the economic value of the mechanical deboning technology, the economic costs and benefits of regulations, and the potential impact of the mechanical deboning technology on livestock prices. They used published information and information from a mail survey of meat packers and processors who have commercially produced or experimented with beef and pork product produced by mechanical deboning as well as industry contacts to look at the potential economic effects of removing the requirements for phrases qualifying the names of finished products and for fat and protein content. Their analysis assumed that (1) as USDA's evaluation of health aspects indicates, there are no harmful effects of consuming this product; and while this may not be true for individuals who must restrict their calcium intake, the contents portion of the label will contain enough information to allow these individuals to avoid consuming the product in unhealthy amounts, and the number of such individuals is small and will have a negligible impact on the demand for processed meat food products containing this product; and (2) as evidenced by consumers' ready acceptance of mechanically deboned poultry and fish products plus the growing production of MDM prior to the imposition of labeling restrictions, consumers will readily accept this product as an ingredient in processed meat food products at prices that provide an adequate incentive for its production and use.

Drs. Bullock and Ward reached the following conclusions:

> Current MDM regulations generate social costs in the neighborhood of $513 million per year. Benefits generated by the regulations are limited to a small segment of the population who must restrict their intake of calcium. An alternative regulation requiring the product label to contain information about the calcium content would generate the same benefits as the current regulations without generating social costs associated with those regulations.
>
> [Their] analysis indicates that the following changes in MDM regulations would be in the public interest.
>
> 1. Revise product labeling requirements so that labels do not impede sales of MDM. The revised label probably should include information about the calcium content of the final product for calcium sensitive consumers. This modified labeling regulation would generate the same social benefits but avoid the social costs of the current regulations.
>
> 2. Removal of the current regulations regarding fat, protein, and calcium contents of MDM. Existing regulations insure that meat products such as franks and weiners will not exceed specified fat levels. Establishing upper limits on the fat content of MDM provides the consumer with no more protection than existing regulations. Therefore, current regulations prevent processors from making efficient use of existing resources. The fat restriction will prevent a large portion of the potential raw material from being used in MDM production. The * * * analysis indicates that modification of the product labeling regulations without also removng the fat restrictions would remove less than 30 percent of the social costs associated with the current regulations.
>
> 3. The current regulations limiting the content of MDM in final products to no more than 20 percent of the meat ingredients does not appear to be generating social costs at the present time. However, there is no economic jurisdiction for this type of regulation. The success of a processed meat product in the marketplace depends on repeat purchases of satisfied customers. The rigors of the marketplace will weed out products that contain too much MDM to satisfy consumers. While this regulation is not generating social costs at the present time, it might do so in the future. Continuation of the 20 percent limit on MDM content would preclude development of potential new products that might be quite acceptable to consumers. Hence, the public interest would be served by removing this regulation.

PCMA and AMI state that the Bullock and Ward study, as well as previous analyses and submissions, respond to the Department's request that additional information regarding the economic effects of widespread use of mechanically processed meat and industry's capability of producing and utilizing the product accompany a resubmission of PCMA's arguments. The petitioners assert that while the methodology and conclusions regarding the aggregate dollar value of benefits in the analysis by Bullock and Ward and earlier analyses (cited in the petition) by Willard Williams and D. W. McNiel differ, each study concludes modified regulation would result in substantial benefits and Bullock and Ward suggest full benefits can occur within 2 years. Finally, PCMA and AMI rely on the Bullock and Ward study as showing that the existing fat and protein content requirements are at least as limiting as the present labeling requirements and, therefore, as supporting the petitioners' position that they should be deleted as limits on this ingredient and, if appropriate, should be imposed only on finished products.

The Department has reviewed the PCMA–AMI petition and accompanying reports and it has carefully considered the arguments raised therein in conjunction with other information it has accumulated over the past several years. The Department's review has included the development of a Preliminary Regulatory Impact Analysis (PRIA), which is published as an appendix to this proposal. Among other things, the PRIA evaluates the economic analysis by Drs. Bullock and Ward.

The Department also has evaluated Market Research Services' report on a series of consumer focus group sessions. From the materials now available, it appears that these sessions were conducted in a professional fashion in accordance with generally accepted techniques for this type of research. As Market Research Services recognizes in its report, focus group research does not provide results which are projectable to a larger population beyond the participants. The findings of research using this technique must, therefore, be regarded as tentative or indicative of potential trends or attitudes among a broader group. Thus, focus groups frequently are used to test ideas or refine methodologies before more extensive research is conducted. (For example, in another area, the Department used focus group research in its development of the questionnaire to be used in a national telephone survey.) In addition, as transcripts or tapes of Market Research Services' focus group sessions were not submitted with the PCMA–AMI petition, the Department has not yet been able to verify the conclusions drawn in the report on this research. Therefore, further references to this research reflect the information currently available and Market Research Service's evaluation of the data. The Department has requested that this material be submitted; and it plans to conduct a more complete evaluation of this research, including an analysis of the underlying data, when it is received during the comment period.

Based on its review and analysis of currently available information, the Department has decided to respond to the PCMA–AMI petition as part of a

rulemaking which proposes changes in certain of the provisions in the MP(S)P regulations and seeks comment regarding the issues raised by these proposed changes and other provisions. By proceeding in this manner, the Department intends to maximize the public's opportunity to participate in the reevaluation of the regulatory framework for MP(S)P that was promulgated in 1978.

The Proposal

The proposal would amend the Federal meat inspection regulations by modifying the definition and standard (including parameters for measuring compliance) and permitted uses for the product currently defined by regulation as Mechanically Processed (Species) Product (MP(S)P) and the labeling requirements for meat food products in which it is used as an ingredient, and by establishing labeling requirements for such product. The proposal contains the following provisions:

1. The definition and standard for the product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of red meat carcasses and parts would be amended to include a new product name and two categories of product (9 CFR 319.5).

(a) The name of the product would be changed to one which seems to provide a less cumbersome and more meaningful description of its characteristics. The options for such name include "Mechanically Processed (Species)" and those names which have been proposed or used in other regulatory and industry contexts—"Mechanically Separated (Species)", "Mechanically Deboned (Species)", and "Mechanically Recovered (Species)"—as well as alternatives submitted with supporting data, views, and arguments during the comment period.

(b) The maximum bone particle size and bone solids content requirements would be retained, but the definition and standard would be amended to clarify that the maximum calcium content is a measure of bone content and that product failing to meet the maximum bone particle size requirement shall be used only in producing animal fats. Moreover, in view of the Canadian government's proposal to permit the presence of somewhat larger bone particles, additional information submitted on the bone particle size requirement will be considered.

(c) The definition and standard would be amended to include two categories of product: one which meets the current fat and protein content requirements (not more than 30 percent fat and not less than 14 percent protein) and a second category of product "for processing" as to which there are no fat or protein content requirements.

(d) The minimum protein quality requirement (a PER of 2.5) would be retained, but the definition and standard would be amended (1) to permit use of product failing to meet the protein quality requirement only in producing animal fats and (2) to clarify the compliance provision by specifying the amino acids included in a calculation of total amino acids.

(e) An approved plant quality control system for establishments producing the product would be retained as a prerequisite for label approval for products consisting of or containing the product, but the following modifications would be made: (1) USDA's 1980 regulations regarding requests for plant quality control, their evaluation and approval by the Administrator of FSIS, and the conditions and procedures for terminating approval (9 CFR 318.4(d)(1) and (2), (e), and (g)(2), 45 FR 54310, 54322–23) would be incorporated, (2) provisions designed to assure compliance with fat and protein content requirements would be restricted to product which purports to meet such requirements, (3) the use of Chemistry Laboratory Guidebook methods would be permitted if no AOAC method is available and provision would be made for the submission of alternative methods of anlysis to the Administrator of FSIS to determine their acceptability, and (4) the quantity of product which may constitute a "lot" would be clarified.

2. The requirements for the handling of material for mechanical processing and the handling of the product itself would be retained, but the references to "MP(S)P" and an imitation of "MP(S)P" would be replaced by the new product name (9 CFR 318.18).

3. Use of the product would continue to be limited to prevent potential health and safety problems and protect the quality and integrity of the meat food product supply, but certain restrictions on product use would be modified and the cross reference to labeling requirements (9 CFR 317.2(j)(13)) would be eliminated as redundant (9 CFR 319.6).

(a) Product meeting the current fat and protein content requirements still could be used in any meat food product in which its use is not prohibited by regulation; and product "for processing" could be used only in such a meat food product that is subject to a regulatory definition and standard which limits fat content.

(b) The restriction on the amount of product that may be used in any meat food product would be replaced with a set of limits based on calcium content, as a measure of bone content, where such product meets the current fat and protein content limits; and product "for processing" would be subject to the current limitation on the amount of product which may be used, but the basis for determining that limit would be clarified to include all livestock and poultry product ingredients.

4. The definitions and standards of identity or composition for meat food products (9 CFR Part 319) in which MP(S)P may be used would be amended.

(a) "MP(S)P" would be replaced by the new product name.

(b) Those definitions and standards which limit fat contend by setting a maximum on the amount of trimmable fat that any lot may contain (9 CFR 319.141, 319.143, 319.144, and 319.160) would be amended to define the limit in terms of a maximum analytical content (50 percent) so product "for processing" could be used in their formulation.

5. Labeling requirements would be established for the product to ensure that it is used in accordance with regulatory requirements; and the labeling requirements for meat food products in which it is used would be amended to lessen the labeling burden and remove possible derogatory implications while continuing to provide adequate, nonmisleading information (9 CFR 317.2(j)(13)).

(a) On the label of the product itself, the name of the product would be followed immediately by the phrase "for processing" unless such product contains not more than 30 percent fat and not less than 14 percent protein, and the product would be deemed to have a calcium content of 0.75 percent unless its name is further qualified by a phrase indicating a different calcium content.

(b) The name of the product would continue to be listed in proper order of predominance in the ingredient statements of meat food products in which it is used, consistent with the general requirements for declaring ingredients in meat food products (9 CFR 317.2(c) (1) and (2) and (f)(1)); but the repetition of this requirement (in 9 CFR 317.2(j)(13)) would be deleted as redundant.

(c) The requirement that the names of meat food products must be qualified to indicate the presence of this ingredient would be deleted as placing undue emphasis on a single ingredient; however, the need for retaining this requirement in order to prevent false or misleading labeling in particular

situations will be considered based on data, views, and arguments submitted during the comment period.

(d) The requirement that the names of meat food products must be further qualified to indicate the amount of powdered bone they contain would be replaced with a requirement that their labels declare calcium content as part of nutrition labeling information—or if the meat food product does not bear nutrition labeling, in a prominent statement in immediate conjunction with the ingredient list—whenever the amount so declared would differ from the amount that would be declared if the meat food product contained only hand deboned ingredients. Additional options under consideration include limiting label information to an ingredients list declaration of the fact that the product contains calcium and/or an informational campaign on the calcium-containing characteristic of the product.

Discussion

1. Product Definition and Standard

The product currently defined by the name "Mechanically Processed (Species) Product" is made by mechanically separating and removing most of the bone from attached skeletal muscle of livestock. While it is possible to use whole carcasses, the raw materials for this type of processing generally are parts of carcasses from which most of the skeletal muscle already has been removed by traditional hand deboning techniques. These bones are broken up and pushed under high pressure through equipment with apertures that allow a small amount of powdered bone to pass through with the soft tissue. The resulting product differs from the hand deboned product, traditionally used as an ingredient, due to its highly comminuted and spread-like consistency and its content of bone, including bone marrow, and certain mineral as well as muscle tissue. These diferences have potential consequences for finished product quality and for health and safety. Thus, while the product has many of the characteristics of "meat" and, if properly regulated, can be used as such in the formulation of quality meat food products, it is sufficiently different that it cannot be regarded as falling within the category of food traditionally defined as "meat" (9 CFR 301.2(tt)). *CNI v. Butz, supro;* 43 FR 26416, 26420.

In 1978, the Department's resolution of this issue was to promulgate a defintion and standard for the product in Part 319 of the regulations which distinguishes the product from "meat" by the use of two terms—"mechanically processed" and "product"—and establishes requirements for its composition (9 CFR 319.5). The Department continues to believe that the product should be separately defined and standardized, and identified by a name that adequately differentiates it from "meat". However, it now appears to the Department that alternative terminology may provide a more meanigful and less cumbersome description of the product and that certain of its compositional requirements may be unnecessarily restrictive when applied to all uses of the product. Therefore, the Department is proposing various amendments to the definition and standard for this product.

(a) *Product name.*—The Department is proposing to delete the term "product" from the name and to consider terminology such as "mechanically separated", "mechanically deboned", and "mechanically recovered" as an alternative to "mechanically processed" to distinguish the product from "meat". The deletion of the word "product" is being proposed because it appears that the term is not essential to assuring that the name accurately identifies and adequately differentiates the product from "meat" and, thus it unnecessarily burdens labeling declarations. In addition, the Department has received evidence that consumers may be confused by the term and even misinterpret it as indicating that the product is somehow artificial or fabricated from non-livestock ingredients. The proposal to reopen the issue of what terminology best describes this new product also is based on evidence that the current name does not adequately describe the characteristics of the product and on the continuing use of alternative terminology in other regulatory and industry contexts.

While there is no doubt that the article resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle is a "product", so are all other livestock-derived foods and ingredients (9 CFR 301.2(ww)). Yet, aside from the "MP(S)P" regulation, only one regulatory definition and standard (9 CFR 319.761, "potted meat food product and deviled meat food product") makes this term part of the name of a standardized meat food product; and in the names of nonstandardized meat food products, its use is limited to cases where some additional terminology is necessary to prevent confusion with similar standardized products (e.g., to differentiate a "combination ham product", which contains non-meat proteinaceous materials, from "ham"). Furthermore, in no other case is the term "product" required as part of the name of a specific livestock ingredient (see, e.g., 9 CFR 319.29(a), "partially defatted pork fatty tissue"); and even "byproducts" as a class of ingredients may be declared generically as "variety meats" in conjunction with the names of certain cooked sausages (9 CFR 319.180(d)).

This almost unprecedented requirement in the name "MP(S)P" flowed from the Administrator's conclusion, in determining not to adopt the name "Mechanically Deboned Meat", that the term "meat" would incorrectly represent that the product consists solely of "meat". 43 FR 26416, 26420. Based on its review of the available information, it appears to the Department that this conclusion fails to consider the product name as a whole—i.e., including the modifying terminology that precedes the species name—and it believes that without this term, the product still would be clearly distinguished as a processed product. Moreover, it now appears that the inclusion of this term may have unintended consequences that are themselves misleading. According to Market Research Services' report on focus group sessions concerning MP(S)P, a number of the participants who discussed their reactions to the current name and potential alternatives commented negatively on the inclusion of the term "product". It seems this term may be perceived as modifying the species identification (e.g., "beef") to indicate that inferior animal parts such as lips, ears, and hooves have been used in making the product, that it either contains substantial ingredients in addition to meat or does not contain meat at all, or even that it contains artificial ingredients or is fabricated from non-livestock or non-food ingredients. (Materials on consumer research conducted for the Gerber Products Company also indicate that consumers may perceive the current name as indicating that the product is artificial.) The Department believes these reactions are consistent with the fact that other livestock ingredients are not called "products" on labels: when confronted with this modifier, consumers apparently may infer that the source of the product differs from those traditionally used in meat food products.

The proposal goes beyond deleting the term "product" to consider replacing "mechanically processed" with alternative terminology because the Department has reason to believe that other descriptions may better communicate the nature of the product. Three of the options under consideration

are "mechanically separated", "mechanically deboned", and "mechanically recovered". Each of these phrases would replace the term "processed" with a term that is more specific and, therefore, may be more meaningful to consumers. Market Research Services' report also explored possible alternative terminology. It concluded that "mechanically processed" was confusing to the focus group participants when used on the label of a frankfurter since these consumers believed all such products are processed, that "Mechanically Deboned Beef" appeared to be a favorable and more informative name than "Mechanically Processed Beef Product," and that the participants preferred this name to "Mechanically Processed Beef" and "Mechanically Separated Beef."

The Department does not believe that lack of familiarity with a name or the appeal of alternative names to consumers is dispositive on the question of what terminology most appropriately describes a new product: instantaneous consumer familiarity and acceptance can not and should not be expected when a new product is used; familiarity and acceptance can only be expected to develop over time as consumers gain experience with products. However, consumer preceptions are important in determining whether or not a particular descriptive phrase that is technically accurate nevertheless may be misleading or at least sufficiently confusing that it dissuades consumers from even trying products with which they might be satisfied on the basis of experience.

The Department also does not regard as dispositive usage of a different name or names within industry or in other non-labeling contexts: when the Department establishes a definition and standard for a product with respect to which a specified name is deemed appropriate, the product must be called by its standardized name in labeling, regardless of any other name(s) associated with it or other products with similar characteristics. However, the continuing use of alternative terminology in other regulatory and industry contexts is a relevant factor in reevaluating the viability of the name established by the Department 3 years ago. In addition to the name proposed in the PCMA-AMI petition—"Mechanically Deboned Meat," this product is called "Mechanically Recovered Meat" by many in the United Kingdom; and Canada is proposing to change its regulations (which currently use the name "Mechanically Deboned Meat") to call the product "Mechanically Separated Meat".

These three options, as well as "Mechanically Processed (Species)" ("MP(S)"), currently are being considered as alternatives to "MP(S)P." As the Department continues to believe that the product's name should indicate the type of livestock from which it is produced, these options would substitute the term "(Species)" (e.g., "Beef", "Pork") for the term "Meat"—i.e., "Mechanically Deboned (Species)" ("MD(S)"), "Mechanically Recovered (Species)" ("MR(S)"), and "Mechanically Separated (Species)" ("MS(S)"). Moreover, the Department recognizes that other terminology also might fulfill its objective of assuring that the name of this product is accurate and adequately descriptive. Therefore, it will consider other alternatives that are submitted during the comment period.

Persons commenting on the four options set forth herein—"MP(S)," "MD(S)," "MR(S)," and "MS(S)"—or supporting other possible options should be aware that the Department is expecially interested in submissions which provide information on consumers' attitudes and understanding of labeling and which address the Department's rationale for adopting "MP(S)P" in 1978. That decision rested, in part, on the Administrator's determination not to adopt the name "Mechanically Deboned Meat" because the term "deboned" would incorrectly represent to consumers that the product does not contain bone, including bone marrow. 43 FR 26416, 26420. The Department continues to be concerned that the phrase "mechanically deboned" might erroneously represent that the product differs from hand deboned meat solely in the manner by which bone has been removed; and it is particularly interested in additional information on this question.

Persons addressing this portion of the proposal also should be aware that the Department recognizes the limited ability of any name to communicate in only a few words the nature of a new product. Therefore, it is specifically soliciting the submission of views on how it can assure that the characteristics of this new product are adequately explained to consumers so that they can make informed purchase decisions. For example, should the Department undertake an informational program that describes the process by which mechanically processed product is made and how it differs from meat?

(b) *Bone particle size and bone solids content.*—The Department is not proposing to change the maximum bone particle size and bone solids content limits currently in the MP(S)P regulations (9 CFR 319.5(a)). However, it is proposing amendments to clarify these requirements by explicitly recognizing that calcium content is used as a measure of bone solids content and that product failing to meet the maximum bone particle size requirement shall be used only in producing animal fats. Additionally, in response to the PCMA-AMI petition, the Department will consider any further information which is submitted during the comment period on its bone particle size requirement—at least 98 percent of the bone particles may not exceed 0.5 millimeter (mm) and no bone particle may be larger than 0.85 mm—in view of the Canadian government's proposal to permit somewhat larger bone particles—98 percent must be less than 0.84 mm and 100 percent must be less than 2.0 mm.

The Department continues to believe that its bone particle size requirement is appropriate. While it recognizes that ingestion of bone particles larger than those permitted in MP(S)P is not likely to cause problems, the current limit appears to be readily attainable and to reflect the particle size associated with good manufacturing practice. 42 FR 54437, 54439, 54440; 43 FR 26416, 26419. However, as the Department noted in promulgating this requirement, it does not wish to discourage the development of types of mechanical deboning equipment and processing procedures in addition to those already evaluated. 43 FR 26416, 26424. Therefore, it is open to new information that good manufacturing practice may result in somewhat larger bone particles than are currently permitted. Commenters supporting a modification of this requirement are requested to submit data on the safety and digestibility of larger bone particles.

(c) *Fat and protein content.*—The Department is proposing to amend the definition and standard (9 CFR 319.5(a)) to include two categories of product: (1) a category which meets the current fat and protein content requirements for MP(S)P—not more than 30 percent fat and and not less than 14 percent protein—and (2) a category "for processing" as to which there are no fat or protein content requirements. This proposal reflects the Department's desire to facilitate the expansion of food supplies and allow the broadest possible use of this product consistent with its obligation to protect the public by preserving the quality and integrity of the meat food product supply. In the Department's view, this obligation includes the objectives of preventing

increases in the fat content of that food supply and assuring that the public can continue to rely on meat food products as reasonably good sources of high quality dietery protein.

In its 1978 regulations, the Department concluded that in order to achieve these objectives, the standardized product MP(S)P should not be permitted to contain more than 30 percent fat or less than 14 percent protein. The conclusion that these unitary requirements were appropriate rested, among other things, on the absence of limitations on the fat content of a number of products in which MP(S)P is a suitable ingredient and on the Administrator's inability to conclude from available information that the protein content minimum would severely restrict production. 43 FR 26416, 26421. It also reflected the Department's decision to employ a unitary use limitation—20 percent of the livestock and poultry product portion of meat food products in which is permitted—rather than follow the approach of its first proposal—establishing multiple classes of product. 41 FR 17560, 17562; 42 FR 54437, 54440.

The Department has reconsidered its conclusion about the need for unitary requirements and is now of the opinion that they seem unnecessarily restrictive when applied to all uses of the product. Current information, including the absence of any significant MP(S)P production since the promulgation of the 1978 regulations and the analysis of potential supplies for mechanical deboning by Drs. Bullock and Ward, leads the Department to believe that, in order to expand food supplies significantly by taking advantage of the full range of materials available for mechanical deboning, a second category of product without fat and protein content requirements should be established and that this can be done without sacrificing the objectives stated above. In essence, this proposal would permit greater flexibility in product composition to the extent other controls can be relied upon to assure that the resulting variability does not compromise the integrity of finished meat food products. These controls include the limits on fat content of finished meat food products established by various definitions and standards of identity and composition (9 CFR Part 319) and the requirement that the mechanically processed product be produced under a quality control system that maintains adherence to good manufacturing practice (9 CFR 319.5(e)(2)). The specific use limitations being proposed for the two categories of product that would be established by this proposal are discussed in conjunction with the Department's proposed amendments to § 319.6 of the regulations (9 CFR 319.6). The discussion that follows focuses on why the Department believes that it should allow use of product for processing as a ingredient constituting up to 20 percent of the livestock and poultry product portion of various standardized meat food products the total fat content of which is limited by regulation.

The Department's 1978 observation that the fat content of a number of meat food products in which MP(S)P may be used is not restricted still is accurate. However, it also is true that definitions and standards of identity and composition do set maximum limits on the total amount of fat that various meat food products may contain. These regulations cover a significant portion of the meat product supply, including cooked sausages such as hot dogs and bologna (9 CFR 319.180), very popular meat food products in which the use of mechanically processed product is particularly likely.

The Department believes that as applied to meat food products such as these, the imposition of a limit on the fat content of one particular ingredient is duplicative and unduly restrictive. Regulations already prevent the total fat content of the products sold to consumers from exceeding appropriate limits. Production within these limits generally is achieved by blending a mixture of livestock ingredients containing differing proportions of fat. Under the proposal, manufacturers would have greater flexibility to incorporate mechanically processed product in these mixtures and, thus, could take greater advantage of market fluctuations to produce economical products.

Moreover, the Department does not have a basis on which to differentiate the type of fat contributd by mechanically deboned as opposed to hand deboned ingredients. The 1977 health and safety review concluded that available data show the lipid spectrum in product made by mechanical deboning to be comparable to that found in meat; and those data, while limited, do not suggest that use of this product will lead to any appreciable increase in dietary cholesterol or other lipids thought to be involved in pathological states in humans as compared with consumption of other products with similar fat contents. The Department does recognize, however, that the data do indicate greater variations in the cholesterol content of mechanically processed product than are found in meat, as well as the limited scope of the data currrently available; and, therefore, it is interested in receiving additional information on the relative cholesterol contents of mechanically deboned and hand deboned ingredients.

Although none of these definitions and standards establishes minimum protein content requirements, it does not appear necessary to require that mechanically processed product used in the products which they cover meet a minimum protein content requirement. Livestock products are composed essentially of fat, protein, and water. The proportions of these three constituents vary over wide ranges in both hand deboned and mechanically deboned ingredients and depend, among other things, on the age, quality, and portion of the animal from which a particular product is derived. While mechanically processed product may tend to have a higher fat content than hand deboned product because more lean tissue has been removed prior to mechanical deboning, both mechanically deboned and hand deboned ingredients can be relatively good sources of high quality protein. Moreover, to at least some extent, protein and fat content are related: as the proportion of one increases, the proportion of the other tends to decrease. Thus, limits on the fat content of finished meat food products operate to some degree as an indirect control on the protein content of such products.

The Department believes that this indirect control should provide sufficient protection against decreases in protein content where product for processing is only one of the livestock ingredients so long as the inclusion of mechanically processed product does not lead to the introduction of extraneous sources of moisture—i.e., so long as the moisture content of the mechanically processed product reflects the indigenous moisture content of the materials from which it is made and is not the result of moisture added as a result of the mechanical deboning process. (The standards for a number of meat food products already control the addition of water during the formulation of finished meat food products (e.g., 9 CFR 319.142 (fresh beef sausage), 9 CFR 319.145 (Italian sausage products), and 9 CFR 319.180 (cooked sausages such as hot dogs and bologna).) The Department is not aware of any significant dilution problem in MP(S)P production to date. However, the limited data currently available to the Department indicate that MP(S)P may have a higher moisture to protein ratio than meat. Moreover, until now the direct limit on protein content has acted

to minimize the chances that such a problem would arise. The removal of this limit on product for processing could increase the likelihood that this product will be significantly diluted with water during its manufacture, and that could result in a considerable lessening of product quality, or even adulteration. For example, the availability of refrigeration equipment means that it is not necessary to use ice to cool the produce during the manufacturing process. Yet some producers may use ice, which results in the addition of water to the product. Without a direct control on protein content, this could result in significant increases in moisture to protein ratios.

While the Department is quite concerned about this possibility, it is reticent to impose direct compositional controls, such as moisture to protein ratios, because its existing requirement that mechanically processed product be produced under a quality control system (9 CFR 319.5(e)(2)) may provide sufficient protection. Therefore, the Department is proposing to rely on its procedures for approving such quality control programs to assure that they maintain adherence to good manufacturing practice by including methods to control potential dilution through the addition of water during processing. It is also particularly interested in receiving comments on whether or not additional regulatory controls which specifically limit product composition are needed and on the relative effectiveness of various approaches to preventing product dilution.

(d) *Protein quality.*—The Department is proposing to retain the minimum protein quality requirement—a Protein Efficiency Ratio (PER) of 2.5—now in the MP(S)P regulations (9 CFR 319.5(a)) as well as the acceptability of an essential amino acid content of at least 33 percent of total amino acids as evidence of compliance with that requirement (9 CFR 319.5(e)(1)). However, it is proposing amendments to permit use of product failing to meet the minimum protein quality requirement only in producing animal fats to clarify the compliance provision by specifying the amino acids included in a calculation to total amino acids.

Currently, if mechanically processed product fails to meet the protein quality requirement (or the protein and/or fat content requirements) in the definition and standard, it is deemed to be an imitation of the standardized product and may be used only in the formulation of imitation products or in producing animal fats. The Department is proposing to restrict use of such noncomplying product to the production of animal fats because it appears that mechanically processed product either is of sufficient quality to be used as at least one livestock ingredient in at least some meat food products—and not merely in their imitations—or it should be used only in producing animal fats. Additionally, the Department is not aware of any industry interest in the production of "Imitation MP(S)P" for use in the formulation of imitation meat food products. Therefore, it seems no reason for continuing to define "Imitation MP(S)P" in the regulations.

The second change that the Department is proposing is solely for the purpose of clarification. The regulations permit use of an alternative measurement for monitoring the protein quality of MP(S)P: an essential amino acid content of at least 33 percent of the total amino acids present is accepted as evidence of compliance with the minimum protein quality requirement. The regulation currently states the 7 essential amino acids (isoleucine, leucine, lysine, methionine, phenylalanine, threonine, and valine) included in this calculation (i.e., tryptophan is excluded), but it does not specify the 18 amino acids included in the calculation of total amino acids (those 7 essential amino acids plus cystine, tyrosine, arginine, histidine, alanine, aspartic acid, glutamic acid, glycine, proline, serine, and hydroxyproline). As the Department wishes to avoid any confusion on this question, it is proposing to list these amino acids in the regulation.

The Department is aware that its continuing acceptance of an alternative measurement to the PER assay—the official method of the Association of Official Analytical Chemists (AOAC)—may be criticized. The Department originally proposed use of this alternative because the PER assay is a cumbersome, time consuming, and costly rat feeding test. At that time, the Department recognized that use of the official methodology would be preferable and said that 12 to 18 months after the effective date of its regulations, a decision would be made as to the continued use of the alternative method, based on all information available to the Department, including data furnished by processors. 42 FR 54437, 54441.

Although these regulations have been in effect for almost 3 years, the Department is now for the first time stating its intention to permit continued use of the alternative method. This is because efforts to develop an improved official method still have not borne fruit and because, in the absence of significant levels of MP(S)P production, the Department does not have adequate data on the basis of which to evaluate the alternative method. It will be several years before scientific work on an improved test, which is expected to be faster and more economical as well as more accurate, is completed and the PER is replaced. By that time, the Department expects that the proposed amendments, if adopted, will have resulted in significant production of mechanically processed product and, hence, data on its protein quality. In view of this situation, the Department plans to continue accepting the amino acid profile measurement as evidence of compliance with the protein quality requirement until a new official method is adopted. At that time, the Department will, on the basis of all available information, reevaluate the need for a protein quality requirement and substitute the new official method if continued monitoring appears necessary to assure the protein quality of mechanically processed product.

(e) *Quality control.*—The Department is proposing to modify the current regulatory requirements for quality control systems in establishments producing mechanically processed product (9 CFR 319.5(e)(2)) to (1) incorporate the provisions regarding requests for plant quality control, their evaluation and approval by the Administrator of FSIS, and the conditions and procedures for terminating approval that were promulgated by the Department on August 15, 1980 (see 9 CFR 318.4 (d) (1) and (2), (e), and (g)(2), 45 FR 54310, 54322–23), (2) permit the use of Chemistry Laboratory Guidebook methods if no AOAC method is available and provide for the submission of alternative methods of analysis to the Administrator of FSIS to determine their acceptability, (3) clarify the quantity of product which may constitute a "lot", and (4) restrict the provisions designed to assure compliance with fat and protein content requirements to product which purports to meet such requirements. All of the proposed changes other than the deletion of testing requirements to verify the fat and protein content of product for processing are minor modifications that the Department believes would improve this regulation.

Thus, the Department is proposing to incorporate certain of the provisions for plant quality control which it promulgated in 1980 after a lengthy rulemaking focusing specifically on that subject. The Department believes that

adoption of these provisions would facilitate the development and maintenance of appropriate quality control programs by providing greater specificity as to the procedures and criteria for assessing the adequacy of such programs. It also would facilitate the integration of plant quality control under this regulation with any other, voluntary plant quality control programs that manufacturers choose to operate. (The information collection requirements regarding plant quality control have been approved by the Office of Management and Budget (OMB). The OMB approval number is 0583-0005.)

The Department is proposing to expand the types of analytical methods that may be used in determining compliance with the product standard because official AOAC methods do not exist for all of the analyses required by the regulation and in order to increase the regulation's flexibility by providing for the approval of alternative methods which yield accurate and reliable data. This proposal also incorporates citations to current AOAC and Chemistry Laboratory Guidebook methods, and it tells the public where it can obtain copies of these methods.

The third proposed amendment would clarify that, as used in this regulation, a "lot" constitutes the quantity of product designated as such by the establishment from the product produced from a single livestock species in no more than one continuous shift of up to 12 hours. The fourth proposed change is necessitated by the Department's proposal to include within the definition and standard a second category of product as to which there are no fat or protein content requirements. The absence of such requirements means that chemical analyses to verify the fat and protein content of product for processing are not needed to determine its compliance with the product standard. Therefore, the proposal would limit these analyses to product which is represented as containing not more than 30 percent fat and not less than 14 percent protein.

2. Handling Requirements

The Department is not proposing to change the current requirements for the handling of material for mechanical processing and the handling of the product itself (9 CFR 318.18). However, adoption of the proposed amendments to the product definition and standard would necessitate changing the language used to describe the product to reflect the new product named and the elimination of "Imitation MP(S)P" as a product to be used in the formulation of imitation meat food products. Therefore, the Department is proposing to amend this regulation by replacing the references to "Mechanically Processed (Species) Product" and "an imitation of such product" with the new product name.

3. Use Limitations

The proposed amendments to the limitations on the use of MP(S)P (9 CFR 319.6) are designed primarily to incorporate the Department's current views on the constraints necessary to protect the quality and integrity of the meat food product supply. They would modify the restrictions on the use of product resulting from the mechanical separation and removal process in accordance with the proposed amendments to the product definition and standard (9 CFR 319.5) and also to encourage the development of machinery capable of producing product with a lower bone content. As amended, these provisions would (1) restrict use of product for processing to 20 percent of the livestock and poultry product portion of meat food products that are subject to definitions and standards of identity or composition which limit finished product fat content (9 CFR 319.6(c) as amended) and (2) replace the restriction on the amount of product containing not more than 30 percent fat and not less than 14 percent protein that may be used in meat food products with limits on the amount of calcium such product may contain when it is used at various levels (9 CFR 319.6(b) as amended). The amended regulation would retain the existing prohibitions against use of different species of mechanically processed product in meat food products required to be prepared from one species (9 CFR 319.6(a)) and against use of mechanically processed product in certain meat food products (9 CFR 319.6(d) as amended). The mandatory nature of these provisions would be clarified by use of the word "shall".

The Department's reasons for proposing to establish a second category of mechanically processed product for use as one of the livestock ingredients in certain standardized meat food products are discussed above in conjunction with the proposal to amend § 319.5(a) of the regulations (9 CFR 319.5(a)) to establish a category of product for processing. The Department believes its proposed limitations on the use of this category of product are necessary to preserve product quality, prevent increases in the fat content of the meat food product supply, and protect the public's ability to continue to rely on meat food products as reasonably good sources of high quality protein. In other words, it appears to the Department that this proposal goes as far as is advisable on the basis of currently available information to permit use of mechanically processed product that is subject to no maximum fat and minimum protein content requirements. Moreover, the Department's analysis of the currently available information on potential supplies of mechanically processed product leads it to believe that the proposed use limitations will enable manufacturers to develop potential supplies for mechanical deboning by utilizing the full range of available starting materials in accordance with good manufacturing practices.

The Department agrees with PCMA, AMI, and others who have said that in protecting the public, the primary focus of concern is the quality of finished products. However, the quality of finished products is dependent on the quality of their ingredients. Therefore, the Department is concerned about the introduction of new ingredients when they may lower the quality of finished products. This concern for ingredient quality is particularly important in view of the fact that a large proportion of the meat food products consumed in this country is not subject to regulatory definitions and standards and that even where standards do exist, they do not impose direct limits on protein content and frequently do not limit finished products' total fat content. When only traditional boneless manufacturing meats are used in formulating meat food products, the potential for serious problems is limited by the basic characteristics of the animals from which these meats are derived. When, however, technological advances enable processors to move beyond this and manufacture products from portions of carcasses previously not considered part of the meat food supply, the potential for a diminution of quality becomes greater. For example, the limited data currently available suggest that the moisture to protein ratio of mechanically processed product may be higher than that of hand deboned meat. Also, because the regulations woud restrict use of product for processing to certain standardized meat food products, it seems likely that mechanically processed product which contains at least 14 percent protein will be used in other products (i.e., those in which product for processing is not permitted because total fat content is not controlled). In view of all these factors, the Department believes that it should proceed cautiously. Therefore, the proposed limitations on the use of

product for processing would retain the current 20 percent maximum on the amount of MP(S)P that may be used and would restrict its use to meat food products in which total fat content is controlled by regulation.

The Department is proposing, however, to amend the regulations to clarify the basis on which the 20 percent restriction is to be calculated. The current provision limits use to 20 percent of the "meat portion" of the meat food product (9 CFR 319.6(b)). The Department intended this phrase to encompass all ingredients derived from livestock or poultry carcasses, including meat byproducts and various poultry products as well as "meat" *per se*. 43FR 26416, 26418. The phrase "meat portion" does not appear to communicate this fact clearly. Therefore, the Department is proposing to replace it with "livestock and poultry product portion" (9 CFR 319.6(c) as amended). As used in this regulation, this phrase includes only those ingredients made wholly from livestock and/or poultry carcasses or parts thereof; i.e., it does not include ingredients made only in part from such carcasses.

The Department believes the revised approach that it is proposing would enable manufacturers to utilize the full range of starting materials available for mechanical deboning and, therefore, increase food supplies. Drs. Bullock and Ward recommended that the current MP(S)P fat content restriction be deleted based on their conclusion that, by preventing a large portion of potential starting materials from being used, it generates social costs without providing more protection than existing regulations, which already insure that meat food products such as wieners and franks will not exceed specified fat levels. The Department's proposed amendments would remove the fat restriction to the extent to which it does not, in fact, provide additional protection. Drs. Bullock and Ward also concluded that the current limit on the amount of MP(S)P which may be used in meat food products does not appear to be generating social costs at present. They nevertheless recommended that this limit be removed because it is without economic justification: consumer satisfaction should be relied on to weed out products containing too much mechanically processed product and the development of potential new products that might be acceptable with higher levels should not be precluded. As the Department's discussion of this issue indicates, the current use level limit is not predicated solely on consumer satisfaction considerations. However, the Department's proposed amendments would provide for the development of acceptable products containing higher levels of mechanically processed product where limits on calcium, fat, and protein content can be relied upon to prevent potential health and safety problems and maintain the nutritional quality of finished products.

The Department's own preliminary analysis also supports the conclusion that the proposed use limits on product for processing would permit efficient use of existing resources. For example, as indicated above, use of mechanically processed product is particularly likely in cooked sausages such as hot dogs and bologna (9 CFR 319.180). The Department estimates that approximately 3.1 billion pounds of such products were produced in 1979. Their livestock (or livestock and poultry) product portion constitutes about 85 percent of the total product, or 2.6 billion pounds. According to Drs. Bullock and Ward, approximately 351.7 million pounds of mechanically processed product would have been produced in that same year if the MP(S)P regulations had not required that the product meet maximum fat and minimum protein content levels and that the names of finished meat food products be qualified by two prominent statements. Thus, their estimate of potential supplies is just over 13 percent of the livestock product portion of these cooked sausages, or less than two thirds of the maximum amount of product for processing that would be permitted under the amended regulations. Even though it is likely that mechanically processed product will only be used in some of these cooked sausage products and/or at less than a 13 percent level, the amended regulations also would permit use of product for processing in other meat food products and they would permit use of product meeting fat and protein requirements at even higher levels in all of these meat food products and in a number of additional products as well. Therefore, they appear to provide ample outlets for potential supplies of mechanically processed product.

The other basic change in use limitations being proposed by the Department would permit usage levels to increase as bone content decreases. This proposed amendment is designed to provide the technology-forcing incentive requested in the PCMA–AMI petition by encouraging the development of mechanical deboning equipment capable of separating out and removing more bone. It also would better accommodate product that might be produced by applying current mechanical deboning technology to whole carcasses or parts from which most of the skeletal muscle has not first been removed by hand deboning and that, therefore, should have a lower bone content.

As to those products in which use of mechanically processed product meeting maximum fat and minimum protein content requirements is permitted, a primary reason for limiting usage level is to prevent potential health and safety problems by controlling hard bone content. Livestock bone has a higher fluoride and lead content than hand deboned meat. 42 FR 54437, 54440. The limit is stated in terms of calcium content not because of concern about the presence of calcium, which is an essential nutrient, but because calcium analyses can be used as a measure of bone content and there is a significant positive correlation between the calcium content and the fluoride or lead content of livestock bone. 43 FR 26416, 26419, 26420. In its evaluation of the safety of mechanically processed product in terms of increased mineral consumption, the Panel assumed that such product would constitute 20 percent of the meat block. 42 FR 54437, 54440. Thus, while the Department also was concerned about maintining the sensory qualities and overall expected characteristics of finished products—consumer satisfaction characteristics that may be evaluated by trying a product, its decision to adopt these limits rested primarily on its conclusion that use in conformity with them would not result in any health and safety problems. 43 FR 26416, 26419, 26422.

The Department continues to believe that the total amount of bone, and hence accompanying minerals, should not exceed the level permitted under current regulations; but it is now of the view that the regulations can continue to fulfill this objective while facilitating technological advances and product innovation. Therefore, the Department is proposing to retain the 0.75 percent maximum limit on the calcium content of the mechanically processed product itself (9 CFR 319.5(a)) and the 20 percent usage level limit for product with that amount of calcium, but to permit progressively higher usage levels as a product's calcium content is reduced to the point where the amount of bone would be no higher than is currently permitted. The proposal includes the theoretical possibility of use at the 100 percent level: if a product's bone content were only one-fifth of the maximum permitted (i.e., 0.15 percent calcium), five times as much product could be

used because the total bone content would be no higher than if product containing the maximum amount of bone were used at the 20 percent level (i.e., 0.15 percent calcium in 100 percent of the livestock and poultry product portion equals 0.75 percent calcium in 20 percent of that product portion). However, the Department believes that far more modest reductions are to be expected (e.g., if calcium content were four-fifths of the maximum, or 0.60 percent, use could increase to five-fourths of the current level, or 25 percent of the livestock and poultry product portion).

The proposed provision (9 CFR 319.6(b) as amended) would establish four different use level limits (100, 50, 25, and 20 percent) and tie those limits to four maximums on calcium content (0.15, 0.30, 0.60, and 0.75 percent, respectively). (It also would provide for the possibility that both product meeting maximum fat and minimum protein requirements and product for processing may be used in a single formulation by basing the restriction on use level on their combined calcium content in such situations.) The proposed limits are intended to provide a set of administratively feasible cut-offs for determining the amount of product that may be used in a particular formulation. The Department is especially interested in receiving comments on the particular limits it is proposing. Do they include a sufficient number of alternatives, particularly for small reductions in bone content; or, for example, should cut-offs of 30 and 40 percent of the livestock and poultry product portion be added?

Persons commenting on the proposal also should be aware of why the Department is not proposing to use the restriction suggested in the PCMA–AMI petition: a 0.25 percent maximum calcium content in the meat portion of finished products. The petition does not explain how this level was selected. As PCMA and AMI are not requesting an increase in the current 0.75 percent limit on the calcium content of the product itself, the Department does not know why they selected 0.25 percent rather than 0.15 percent calcium, the level that the Department is proposing to permit in conjunction with the maximum potential use level of 100 percent. It is possible that the petitioners intended this higher level to reflect the possibility that calcium will be contributed by ingredients in addition to those produced by mechanically deboning livestock carcasses (e.g., product produced by mechanically deboning poultry carcasses). While this may, in fact, happen in a particular formulation, the Department's interest is not in restricting calcium content *per se*. As is explained above, calcium content is employed as a measure of bone content, and the particular calcium limit used reflects determinations about the maximum amount of bone and accompanying minerals associated with that limit in product manufactured by mechanically deboning livestock carcasses. Such determinations are not necessarily applicable to other ingredients. Therefore, the Department believes that the calcium content restriction should be based solely on the calcium contribution of the mechanically processed product regulated by these provisions. This approach also seems necessary to assuring the validity of the premise underlying the Department's proposal to permit higher use levels: the livestock bone content of no finished meat food product would be any higher than is permitted under existing regulations.

So long as this limit on bone content is maintained, it does not appear that permitting increases in the use levels of product meeting maximum fat and minimum protein content requirements would present any health or safety problems. However, the Department is interested in receiving comments on this question. For example, increases in the levels of mechanically processed product might be accompanied by increases in the levels of bone marrow in meat food products. In the Department's prior rulemaking, concern was expressed that if the bone marrow content of MP(S)P were significant, the products's nucleic acid content might be higher than that found in meat and such an increase could have serious health implications for gout sufferers. 43 FR 26416, 26419. Nucleic acids—deoxyribonucleic acid (DNA) and ribonucleic acid (RNA)— are the major source of purines in the diet. High purine intakes may increase blood and urine uric acid levels and exacerbate gout and other conditions (e.g., uric acid stones) in sensitive individuals who have either a reduced ability to excrete uric acid or an increased endogenous production of uric acid. During the prior rulemaking, one researcher commented that the purine content of MP(S)P should be similar to that of meat, but he did not provide supporting data and product content was not otherwise established. 43 FR 26416, 26419. Since that time, the Department has received limited data from researchers at the University of California at Davis which indicate that the total purine content of MP(S)P made from older, female cattle is no higher than the purine content of beef muscle (W. C. Weir and A. J. Clifford, University of California, Davis, Department of Nutrition, College of Agriculture and Environmental Science, personal communication, 1978). This finding is consistent with research by the same scientists and by the Department's Science and Education Administration (L. L. Young, *Journal of Food Science*, 45: 1064, 1980) which found that the purine contents of hand deboned chicken and product made by mechanically deboning chicken carcasses are similar.

Based on a review of these data, it appears to the Department that use of mechanically processed product in formulating meat food products in compliance with the current or proposed regulations would not present an increased risk for gout sufferers or other hyperuricemic individuals. The Department is aware, however, that researchers at the University of Wyoming have reported nucleic acid levels in MP(S)P which are several times higher than those found in beef muscle, principally due to their finding increased levels of DNA (P. Arasu, *et al., Journal of Food Science*, 46: 1114, 1981). This research is difficult to interpret because it does not address purine content and because it found ratios of DNA to RNA in beef bone marrow and muscle of 10.5 and 3.8 respectively, whereas other research findings indicate that ratios of 1.3 to 1.8 in bone marrow (Altman and Ditmer, *Biology Data Book*, Vol. 1, FASEB, 1972) and 1.0 or less in muscle (Munro and Gray, *Compar. Biochem. Physiol.*, 28:897, 1969) are to be expected. In view of this research and the limited data currently available, the Department is interested in receiving further data and comments on the relative purine and nucleic acid contents of meat and mechnaically processed product.

One final proposed revision of the current regulations should be noted. The proposal would delete the first sentence of § 319.6(a) of the regulations (9 CFR 319.6(a)), which cross references the MP(S)P labeling requirements (9 CFR 317.2(j)(13)). The Department is proposing this change to simplify the regulation because it believes the sentence to be unnecessary. Finished meat food products containing MP(S)P would continue to be subject to all relevant labeling requirements.

4. Finished Product Definitions and Standards

Adoption of the proposed amendments to the MP(S)P regulations would necessitate only one change in the definitions and standards of identity

or composition for finished meat food products in Part 319 of the regulations (9 CFR Part 319): the name "Mechanically Processed (Species) Product" would have to be replaced by the new product name in each of the regulations which states that MP(S)P may be used as an ingredient (9 CFR 319.15(c), 319.104(f), 319.105(b)(10), 319.141–319.144, 319.145(a)(1)–(3), 319.180(a)–(c), 319.182, 319.260, 319.261, 319.280, 319.281(a)(1), 319.300–319.302, 319.303(b)(9), 319.304–319.307, 319.311, 319.312, 319.600(a) and (b), 319.760(a), and 319.762). However, in view of its proposal to establish a category of product for precessing to be used as an ingredient in finished meat food products with limits on their total fat content, the Department believes that an additional change is appropriate in the definitions and standards for fresh pork sausage (9 CFR 319.141), breakfast sausage (9 CFR 319.143), whole hog sausage (9 CFR 319.144), and smoked pork sausage (the smoked version of fresh pork sausage) (9 CFR 319.160), four products in which use of MP(S)P currently is permitted.

Each of the regulations covering these meat food products contains a provision designed to limit fat content: they may not be made with any lot of product which, in the aggregate, contains more than 50 percent trimmable fat (i.e., fat that can be removed by thorough, practicable trimming and sorting). These controls operate on ingoing ingredients, and not the total fat content of finished products; and they require the visual evaluation of solid pieces of meat, and thus obviously cannot be applied to the highly comminuted product produced by mechanical deboning. Therefore, they do not meet the Department's proposed criteria for meat food products in which mechanically processed product for processing could be used.

The Department is proposing to amend these regulations so that its criteria are met because it believes that with a minor modification, fresh pork sausage, breakfast sausage, whole hog sausage, and smoked pork sausage are appropriate candidates for use of mechanically processed product for processing. The proposed amendments would replace the 50 percent trimmable fat limit with a 50 percent maximum limit on the analytical fate content of the finished product. The Department believes that this level is appropriate for a finished product made with product containing no more than 50 percent trimmable fat in the aggregate of the ingoing ingredients. However, it recognizes that a 50 percent maximum may constitute a small reduction in the current fat content of at least some of the meat food products covered by these regulations. Therefore, it is particularly interested in receiving comments on the proposed limit.

5. Labeling

(a) The product.—There currently are no special labeling requirements for MP(S)P itself. When the product bears a label, that label must conform to the general requirements in the regulations (see 9 CFR Part 317). Until now, the Department has not seen the need for special requirements because with one category of standardized product subject to a unitary use limitation, no particular compliance problems are presented: MP(S)P either may or may not be used as an ingredient in a particular meat food product; and if its use is permitted, it may constitute no more than 20 percent of the livestock and poultry product portion. The proposed amendments would change this situation by establishing two categories of product, one of which could be used as an ingredient in more meat food products than the other and, at least potentially, at higher levels. The Department believes that if such changes are adopted, additional labeling is necessary to assure compliance with their provisions and thereby prevent the adulteration and misbranding of finished meat food products.

The objective of the proposed labeling requirements (9 CFR 317.2(j)(13)(i) as ameded) is to identify clearly those characteristics which affect use of the product, and thereby enable the Department to enforce the amended use limitations, while imposing the least possible burden. It appears to the Department that this can best be accomplished by labeling that would result in the most restricted use contemplated by the regulations unless affirmative action is taken to label the product otherwise. Therefore, the proposed provision would require the product's name to be followed immediately by the phrase "for processing" unless the establishment is representing that the product contains not less than 14 percent protein and not more than 30 percent fat; and such product would be deemed to have a calcium content of 0.75 percent unless the establishment represents that it has a different calcium content by qualifying the product's name with a phrase to this effect.

(b)–(d) *Finished meat food products.*—In addition to its obligation to prevent the adulteration of meat food products, the Department is responsible for assuring that they are not misbranded and they are properly labeled. The Department fulfills this responsibility by reviewing product labels to make sure that they comply with the general and product-specific requirements in the regulations and that they are not otherwise false or misleading. In such reviews, one of the basic questions is whether or not a label bears suffcient information to identify the product and its characteristics adequately and to distinguish it from similar products. To answer this question, the Department considers many factors, including the types and amounts of ingredients the product contains, the comparability of the product to ones already on the market, and the experiences and expectations consumers will bring to the product and its label. These factors frequently do not present black and white distinctions: products often are not as different as apples and oranges; and consumers have different backgrounds, interests, knowledge, and needs. Therefore, the Department must exercise its judgment based on its accumlated experience and the information available.

In its prior rulemaking, the Department was confronted with two issues regaring the labeling appropriate for meat food products containing MP(S)P: (1) whether the product resulting from the mechanical separation and removal process should be subsumed within a generic species delcaration in ingredients statements (e.g., "beef") or whether it should be listed separately in its proper order of predominance and (2) assuming it is declared as a distinctive ingredient, whether supplementary information should be provided and, if so, what type of information is appropriate and how should it be presented. The disagreement surrounding the first labeling issue centered on the basic charateristics and nature of the product resulting from the mechanical separation and removal process. Once it was determined that this product cannot be regarded as falling within the category of food traditionally defined as "meat" and that it should be defined as a distinctive, standardized ingredient, the appropriate resolution of this issue was clear: the product should be declared, by the name specified in its definition and standard, in the ingredient statements of meat food products in which it is used. *CNI v. Butz, supra;* 43 FR 26416, 26420–21; 9 CFR 317.2 (c) (1) and (2) and (f)(1).

As this document indicates, the Department continues to believe that mechanically processed product differs materially from "meat" in its composition and consistency and that the characteristics, production, and use

of such product should be subject to regulatory definition and standardization. Therefore, it should be listed separately in ingredient statements in accordance with the general labeling requirements for meat food products and in light of consumers' interest in knowing each of the ingredients in the foods they purchase. However, because the general labeling regulations already require a separate declaration of this product (9 CFR 317.2 (c) (1) and (2) and (f)(1)), repeating this requirement in the product-specific regulation (9 CFR 317.2(j)(13)) is unnecessary. Consequently, the Department is proposing to delete as redundant the reference to ingredient statement declarations in § 317.2(j)(13) of the regulations (9 CFR 317.2(j)(13)).

The resolution of the second labeling issue was far more controversial in 1978, and it continues to be so today. Decisions about the need for supplementary labeling information on products containing MP(S)P require difficult factual and policy judgments. In the prior rulemaking, the Administrator reviewed the available information and concluded that (1) MP(S)P is unique and not an expected ingredient and (2) the need of some individuals to limit their intake of calcium is an important consideration. On the basis of these findings, the Department promulgated regulations requiring that the names of finished meat food products containing MP(S)P be qualified by two phrases, one to indicate the presence of this ingredient and a second to indicate the maximum powdered bone content of the finished product. 43 FR 26416, 26420.

The Department has reviewed and reevaluated these requirements in light of 3 years of experience with the MP(S)P regulations, the information accompanying the PCMA–AMI petition, and its current labeling policies. As a result, the Department believes that by modifying the present requirements, it can reduce their burden and remove possible derogatory implications about products containing MP(S)P while continuing to assure that such products are accurately and adequately labeled. Therefore, the Department is proposing to amend the regulations as follows: (1) The requirement that the names of all finished products containing mechanically processed product must be qualified to indicate its presence would be deleted; however, the need for retaining such a requirement in particular situations will be considered on the basis of information submitted in this rulemaking. (2) The requirement that the names of all finished products containing mechanically processed product must be qualified to indicate their powdered bone content would be replaced with a requirement that their labels declare calcium content whenever the amount so declared would be different than the amount that would be declared if a particular finished product contained only hand deboned ingredients; and alternative approaches to serving the needs of calcium-sensitive individuals will be considered on the basis of information submitted in this rulemaking.

It now appears to the Department that requiring the names of all finished products to be qualified by a phrase indicating the presence of mechanically processed product places undue emphasis on a single ingredient even if, as the Department concluded in 1978, this ingredient is unexpected and unique. The mere fact that an ingredient is new means that its presence in existing products may not be expected by at least some consumers. However, it need not mean that its inclusion always has to be noted in a product name qualifier. Such an approach simply does not appear to be feasible in an era when advances in food technology regularly result in the modifications of existing product formulations to include new forms of ingredients, or even totally new ingredients. The mechanical deboning technology has made possible the introduction of a new form of livestock product. The unique properties of this product distinguish it from the livestock product "meat" produced by traditional hand deboning techniques; and these properties, along with other factors, are the basis for the Department's decision to subject the characteristics, manufacture, and uses of this new product to regulatory controls.

Having taken these actions and required that mechanically processed product be separately listed in ingredient statements, the Department believes it should go further and require that this product's presence always be repeated in a prominent statement qualifying finished product names only if its use always significantly alters the basic identity of the meat food products in which it is included as an ingredient. The Department no longer believes it can justify a finding that the use of mechanically processed product always has such a significant effect. In 1978, the Department determined that mechanically processed product can, subject to regulatory restrictions, be used as "meat" in the formulation of meat food products. If mechanically processed product is used properly, the sensory characteristics of finished products should not be adversely affected. The mere possibility of such negative effects (for example, as a result of including a particular type of mechanically procesed product at a level which is inappropriate in certain formulations) does not distinguish the use of mechanically processed product from a number of other ingredient modifications which do not trigger special labeling requirements. In those cases, full ingredient information in combination with marketplace forces are relied upon to maintain the finished product qualities consumers can perceive and evaluate. Consumers who believe particular ingredients adversely affect product characteristics, or who wish to avoid particular ingredients for any other reason, can do so on the basis of this declaration.

Information on the levels at which mechanically processed product is likely to be used also makes it difficult to conclude that its inclusion always significantly alters the identity of finished products. According to Drs. Bullock and Ward, industry members generally use mechanically processed pork and beef at the 5 to 15 percent and 10 to 15 percent levels, respectively; and they concluded that the usage level would be 5 to 10 percent of the meat block in most processed products (although it might be as high as 100 percent in some products if this were permitted by the regulations). In other words, mechanically processed product usually would be a relatively minor livestock product ingredient. Yet, under the existing regulation, its presence always would be given more labeling prominence than other livestock product(s) used in the formulation. This appears to the Department to be a disproportionate emphasis on a single ingredient.

The Department is concerned as well about the possiblity that the additional declaration may confuse, or even mislead, consumers about the characteristics and quality of finished meat food products and could have the unintended consequence of discouraging the purchase of products that consumers would find satisfactory. For example, according to Market Research Services, focus group participants reacting to a label for a chili product felt that it contained a fairly large amount of mechanically processed beef product (MPBP) and began to wonder what was wrong with MPBP that would require its being labeled in such large letters; and the consensus of the participants was that there must be something wrong with MPBP if the government requires this type of labeling. Market Research Services also reported that the majority

of the participants felt it was unnecessary to emphasize the mechanically processed product in a qualifying phrase if there is nothing wrong with it, but it should be emphasized if the product is not safe or nutritious or if it denotes an inferior finished product. Thus, Market Research Service's report indicates that consumers may draw unwarranted conclusions from the labeling currently required. Other, nonlabeling regulations assure that, as used, mechanically processed product is safe for the general population and that the nutritional quality of finished meat food products is protected; and available information does not appear to support a conclusion that the mere inclusion of mechanically processed product as an ingredient in those meat food products in which its use is permitted necessarily makes all such products inferior to all other, similar ones in which mechanically processed product is not used.

The Department does recognize, however, that there may be situations in which the use of mechanically processed product or its use at certain levels can be shown to alter the basic identity of meat food products significantly. In such cases the failure to qualify finished product names to indicate the presence of mechanically processed product may be false or misleading. Therefore, the Department may retain this requirement for particular uses of mechanically processed product if data, views, and arguments submitted during the comment period provide a basis for differentiating among types of meat food products and concluding that the failure to include such a qualifying phrase may be false or misleading in certain situations. Persons commenting on this issue should be aware that the Department is especially interested in submissions which address what the Department believes to be the primary concern—the quality and characteristics of finished meat food products.

The final labeling provision promulgated by the Department in 1978 requires that the names of all meat food products made with MP(S)P be further qualified to indicate the amount (by percent) of powdered bone they contain. This provision is unlike the other labeling requirements in that it is designed to serve the needs of persons with a particular health problem rather than those of the general population. In reviewing the health and safety aspects of mechanically processed product, the Panel found that the amount of calcium that the product would add to the diet could not be considered hazardous for most people; in fact, a slight benefit might be expected, especially for persons whose customary intake of this essential nutrient falls below the Recommended Daily Allowance. However, a small percentage of the population may require a low calcium intake for medical reasons. These persons are calcium hyperabsorbers, and they are likely to be under medical supervision to limit their calcium intakes. The Panel's findings and many comments on the proposed regulations convinced the Administrator that this health problem was an important consideration which should be addressed by supplementary labeling information. 43 FR 26416, 26420.

The Department continues to be concerned about the needs of this segment of the population. However, after reevaluating the method it chose to address this concern, the Department is proposing to replace the qualifying phrase on powdered bone content with information on calcium content. The Department believes that this approach would more directly and effectively notify persons on calcium-restricted diets and that it would do so without the negative effects that the current language appears to have on the evaluation of such products by the general population. As a result of its review, the Department also believes that it is not necessary to provide calcium content information on the labels of all finished products made with MP(S)P and that it should consider alternative approaches to the current and proposed labeling requirements.

In its prior rulemaking, the Department focused on the fact that inclusion of MP(S)P results in the addition of a new ingredient component—powdered bone. The Department now believes that information directly addressing the effects of including mechanically processed product on the composition of meat food products is a more appropriate way to meet the needs of calcium-sensitive individuals. The proposed provision (9 CFR 317.2(j)(13)(ii) as amended) would require that the amount of calcium, expressed as a percentage of the U.S. Recommended Daily Allowance (U.S. RDA) in a serving, be stated on the label of a meat food product containing mechanically processed product whenever such amount would differ from the amount that would be stated if the meat food product contained only hand deboned ingredients. The Department believes that nutrition labeling is the most approriate place for nutrient content information. Therefore, the proposal would require that the calcium declaration appear as part of any nutrition labeling that a meat food product bears. However, many meat food products do not bear nutrition labeling, and the Department continues to ascribe to its 1978 conclusion that the issue of when nutrition labeling should be required is broader than the subject of this rulemaking. 43 FR 26416, 26421. Therefore, the proposal would provide for an alternative declaration: if a meat food product bears no nutrition labeling information, the calcium declaration would appear in immediate conjunction with the ingredients list as part of a prominent statement which includes the serving size (i.e., the quantity of food) used in determining the amount present (e.g., "a 2 ounce serving of this product contains 4 percent of the U.S. RDA of calcium").

Under the proposal, the procedures and rules for determining and expressing the amount of calcium in a serving of a product would be the ones used by the Food and Drug Administration (FDA) in its nutrition labeling program (21 CFR 101.9 (b)(1), (c)(7) (i) and (iv), and (e)), as referenced in the proposed amendment. FDA's regulations require, among other things, that calcium content be expressed as a percentage of the U.S. RDA in 2 percent increments up to and including the 10 percent of the U.S. RDA level, in 5 percent of the U.S. RDA level, and in 10 percent increments above the 50 percent increments above 10 percent and up to and including the 50 percent of the U.S. RDA level; and they permit the presence of amounts less than 2 percent of the U.S. RDA to be indicated by a zero or by an asterisked statement which explains that less than 2 percent is present (with 1 gram (g) of calcium being equal to 100 percent of the U.S. RDA) (21 CFR 101.9(c)(7)).

The Department is proposing to reference these portions of FDA's nutrition labeling requirements because they appear to be appropriate for the meat food products covered by its regulations. In particular, the Department believes that the increment levels for expressing calcium content are reasonable and would assure that where the inclusion of ingredients manufactured by mechanical deboning make meaningful contributions to meat food products' calcium content, calcium content would be stated; but where their contributions are relatively minor, it need not be. The 2, 5, and 10 percent of the U.S. RDA increment levels would operate as follows: where the amount of calcium that would be declared if a product were made solely with hand

deboned ingredients is no greater than 10 percent of the U.S. RDA, increments of 2 percent of the U.S. RDA—or 20 milligrams (mg) of calcium—would mean that relatively small calcium increases would result in calcium content being stated; but where such a meat food product contains greater amounts of calcium, increments of 5 or 10 percent of the U.S. RDA would mean that greater increases would be necessary before calcium content would have to be stated. The use of 2 percent per serving as the minimum amount to be declared as a percentage of the U.S. RDA also means that calcium content need not be stated where small amounts of mechanically processed product are used in a meat food product that otherwise contains almost no calcium. For example, the maximum calcium content of mechanically processed product made from cattle or swine is 0.75 percent, which is equivalent to 7.5 mg per gram of product. If this product were used to fulfill 5 percent of a minimum 12 percent meat requirement in a meat food product with a serving size of 200 g, the mechanically processed product would constitute 0.6 percent, or 1.2 g, of the total product; and its maximum calcium contribution would be 9 mg, or only 0.9 percent of the U.S. RDA. This amount would not have to be declared.

Thus, the proposed provision recognizes the fact that the amount of mechanically processed product which may be used can vary widely across a broad range of different types of meat food products with very different ingredients. It would take these divergent situations into account by recognizing the diluting effect that may occur when mechanically processed product is mixed with other ingredients in the formulation of a finished meat food product. The Department believes that there may be an additional situation in which calcium content need not be stated: where the calcium content of a meat food product is high enough that such product already is inappropriate for persons on calcium-restricted diets even if no mechanically deboned ingredients are used. Therefore, it is specifically soliciting comments on whether such a level can be defined.

The Department also is particularly interested in receiving comments on its proposal that in determining whether or not calcium content must be stated, the meat food product in question should be compared with one which contains no ingredients produced by mechanical deboning, thereby taking into account the potential calcium contribution of product produced by mechanically deboning poultry carcasses. This approach appears apppropriate becasue it is the use of the machanical deboning technology which results in an unexpected increase in the calcium content of meat food products; an it is the failure to be notified of the unanticipated additional calcium that results when traditional hand deboned livestock ingredients are replaced by ingredients produced with this technology that may mislead persons on calcium-restricted diets. See *CNI v. Butz, supra.*

Persons commenting on this aspect of the proposal also should be aware of why the Department is not proposing to use the alternative to nutrition labeling suggested in the PCMA–AMI petition: stating calcium content in the ingredient statement itself. The petition does not explain how such a calcium content statement would be expressed, but the model label used in the PCMA-sponsored consumer research by Market Research Services includes the information as a statement of the percentage of the mechanically processed ingredient that is calcium—"INGREDIENTS: Beef, Mechanically Processed Beef contains up to 0.13 percent Calcium, Water, Corn Syrup, Salt, Flavoring, Dextrose, Sodium Ascorbate (Vitamin C), Sodium Nitrite" (Exhibit 5d). The Department does not believe that this type of declaration would be appropriate. The proportion of a mechanically processed product that is composed of calcium does not appear to be useful information where the public does not know the amount of such product contained in a serving of a finished meat food product. This type of declaration also is inconsistent with the way in which calcium content generally is stated on food labels—as the percentage of the U.S. RDA in a serving. Therefore, it might confuse consumers about the amount of calcium actually contributed by this ingredient (e.g., where the value declared would be less than the amount of calcium expressed on a percentage of the U.S. RDA per serving basis). Calcium content information could not be expressed in terms of the U.S. RDA within the ingredient statement because this statement provides only a basic recipe of the ingredients used in the formulation, not the amounts of those ingredients consumed as part of a serving of the finished meat food product. Finally, the Department believes that providing quantitative information on only the mechanically processed product would be inappropriate in view of the fact that a meat food product may have a number of other of calcium-containing ingredients (e.g., nonfat dry milk, beans). Therefore, such information could not be relied upon by consumers to provide an accurate picture of the finished product, and it could mislead them into disregarding the calcium contribution of other ingredients.

It appears to the Department that because the formulations of meat food products can include widely varying amounts of mechanically processed product and other calcium-containing ingredients and because the calcium content of mechanically processed product itself varies, the public should be provided with quantitative information on the calcium content of finished meat food products made with mechanically processed product. Yet the Department is concerned about the burden its proposed resolution of this issue may impose, particularly on small businesses. The calcium content declaration is the only requirement in the current or proposed regulations that would necessitate chemical analyses of finished products made with mechanically processed ingredients (other requirements necessitating chemical analyses are controlled at the ingredient manufacturing level); and complying with this requirement might require technical expertise that is beyond the capabilities of some meat food product manufacturers as well as costs that might discourage such manufacturers from using mechanically processed product. In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), these concerns led the Department to consider the impact of the proposed regulatory changes on small entities and the possibility that alternative requirements may substantially accomplish its objectives while minimizing this impact. The Department's analysis of these issues is included in its Preliminary Regulatory Impact Analysis (PRIA).

As the PRIA indicates, establishments may determine calcium content by conducting tests in their own laboratories or by obtaining testing services from private laboratories. It appears that small businesses are less likely than larger ones to have adequate in-house testing facilities and, therefore, that they are more likely to rely on private laboratories for calcium content information. While there is wide variation in the prices charged for calcium analyses, the PRIA estimates the average cost at $20 to $25 per test. Therefore, for example, if analyses are conducted once a month at an average cost of $22.50 per test, the annual

expenditure for assuring the continuing accuracy of a calcium content declaration would be approximately $270 per product. In addition, if a meat food product's calcium content is variable enough (e.g., as a result of regular modifications in the proportions of the ingredients used in the formulation) to result in different label declarations, an establishment would incur the costs of procuring, storing, and utilizing alternative labels. Such costs would include, but not be limited to, expenditures for label redesign, plate changes, and overhead and approval, which can be estimated at up to $500 for a relatively uncomplicated label change such as this one. While these costs do not appear to be high enough to preclude even small processors from using machanically processed product, the Department is aware that a small business might have a lower volume of product across which to spread such costs.

Concern about the potentially higher impact on small businesses of requiring that meat food product labels bear quantitative information on calcium content has led the Department to consider the following options as alternatives to such a declaration: (1) restricting supplementary labeling information to a parenthetical declaration, in the ingredient statement, of the fact that mechanically processed product is a calcium-containing ingredient (e.g., "Ingredients: Beef, Mechanically Processed Beef (a calcium-containing ingredient), Water, * * *") and/or (2) relying on an informational campaign about the calcium-containing characteristic of mechanically processed product to meet the needs of persons on calcium-restricted diets. While the Department believes that these alternatives may substantially achieve the objectives to be served by calcium content declarations on at least some meat food products, a thorough evaluation of their potential viability requires up-to-date information on a number of questions on which the Department is particularly interested in receiving comments.

The issues involved include the nature and treatment of the population segment for whom mechanically processed product's calcium content may pose a problem: How large is this group? To what extent are such persons counselled by physicians and other health professionals to restrict their calcium intakes and how much guidance and specific information do such professionals provide? Do the diets prescribed vary significantly in the amount of calcium they permit? Is there a level below which calcium content may be regarded as insignificant to persons on such diets? Do such diets preclude the use of certain products or products with more than a certain amount of calcium?

The Department also is interested in receiving comments addressing consumer understanding and the potential effectiveness of the alternatives under consideration herein as vehicles for providing adequate, nonmisleading information and for responding to the health problems of population subgroups, including the usefulness of non-labeling materials to supplement label information.Persons commenting on these issues should be aware that the Department's proposal to replace a declaration of the amount of powdered bone in meat food products with a declaration of their calcium content is based in part on information indicating that the present declaration may misinform the general population about the characteristics of meat food products made with mechanically processed product. When Market Research Services asked focus group participants to record their initial reactions to frankfurter labeling which included a statement that the product "contains up to 0.51 percent powdered bone" (i.e., to write down what it told them about the product), many of the respondents commented on this declaration, frequently negatively, and some misread the figure as 51 percent or thought that powdered bone was a separately added ingredient. According to the researchers, even after a discussion of the labeling, many of the participants felt that bone was added to the hot dog., rather than associated with the mechanically processed product, and did not associate it with calcium content. Thus, a declaration intended to serve the ingredient information needs of a particular segment of the population appears to have unintended consequences for the evaluation of finished meat food products by the general population and, contrary to the Department's expectation when it promulgated the current requirement, to disparage unfairly such finished products. 43 FR 26416, 26420. The Department believes that the proposal would rectify this situation by relying on an objective declaration that provides relevant information for both persons on calcium-restricted diets and the general population.

Regulatory Impact Analysis

As indicated above, this proposed action has been reviewed under USDA procedures established to implement Executive Order 12291. In compliance with section 2 of that order, the Department's review is reported in its Preliminary Regulatory Impact Analysis (PRIA), which is being published in its entirety as an appendix to this proposal.

The objectives of the PRIA are as follows: First, to determine whether or not there is a substantial information regarding the necessity and potential consequences of the proposed regulatory changes. Second, to determine whether or not the potential benefits to society resulting from the proposed regulatory changes outweigh the costs of such proposed changes. Third, on the basis of an analysis of alternative ways of satisfying the objectives of the proposed regulatory changes, to determine whether or not the proposal would tend to maximize the net benefits to society. The Department's preliminary analysis indicates that each of these questions should be answered in the affirmative.

The following outline describes the steps that the Department took in reaching these tentative conclusions:

1. The objectives of the proposed changes were set forth along with their justification. The causes of the problems which the proposal is designed to address and the methods by which the proposal would correct these problems were analyzed.

2. Three alternatives were analyzed: the current regulations, the proposal to revise those regulations, and "no regulatory action" (i.e., rescinding the current regulations).

3. In analyzing the proposed changes and possible alternatives, the costs and benefits of the current regulations were compared with the potential costs and benefits that would result from changing these regulations. The direct and indirect costs to be borne by both consumers and various segments of industry were explored and compared with the direct and indirect benefits to such groups. Costs and benefits were quantified in monetary terms where possible and where this could not be done, they were described in detail. (The PRIA includes an explanation of the types of benefits anticipated and the mechanism by which the proposed changes are expected to result in these benefits.)

The PRIA also satisfies the analysis requirements of the Regulatory Flexibility Act (P.L. 96-354), which deals with the impact of regulation of small entities. The objective of this portion of the analysis is to consider the impact of the proposed regulatory changes on small entities and the appropriateness of tailoring regulatory requirements to the sizes and types of businesses involved.

The Department's preliminary analysis in this area indicates that the costs which small businesses entering the mechanically processed product market would face under the proposal basically are the costs of entering any new market; and, thus, while such costs would be relatively greater for small than large businesses, this is not the result of the regulations *per se*.

Proposed Rule

On the basis of the foregoing, the following amendments to the Federal meat inspection regulations (Parts 317, 318, and 319) are proposed:

1. The authority citation for Parts 317, 318, and 319 reads as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438, 21 U.S.C. 466–466k.

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

2. Section 317.2(j)(13) (9 CFR 317.2(j)(13)) would be revised to read as follows:

§ 317.2 Labels; definition; required features.

* * * * *

(j) * * *

(13)(i) On the label of any "Mechanically Processed (Species)" described in § 319.5(a) of this subchapter, (*a*) the name of such product shall be followed immediately by the phrase "for processing" unless such product has a protein content of not less than 14 percent and a fat content of not more than 30 percent and (*b*) such product shall be deemed to have a calcium content of 0.75 percent unless its name is qualified by a phrase indicating a different calcium content.

(ii) When any "Mechanically Processed (Species)" described in § 319.5 of this subchapter is used as an ingredient in the preparation of a meat food product, the label of such meat food product shall state its calcium content, determined and expressed as the percentage of the U.S. Recommended Daily Allowance (U.S. RDA) in a serving in accordance with 21 CFR 101.9(b)(1), (c)(7)(i) and (iv), and (e), as part of any nutrition information included on such label, or if such meat food product does not bear nutrition labeling information, as part of a prominent statement in immediate conjunction with the list of ingredients, as follows: "A ——— serving of this product contains ———% of the U.S. RDA of calcium", with the blanks to be filled in, respectively, with the quantity of such product that constitutes a serving and the amount of calcium provided by such serving: *Provided*, That, where the percent of the U.S. RDA of calcium to be declared would not differ from the percent of the U.S. RDA that would be declared if the product contained only hand deboned ingredients, calcium content need not be stated.

* * * * *

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

§ 318.18 [Amended]

3. Section 318.18 (9 CFR 318.18) would be amended by replacing the words " 'Mechanically Processed (Species) Product' or into an imitation of such product" in the first sentence with the words " 'Mechanically Processed (Species)' " and by replacing the words " 'Mechanically Processed (Species) Product' or an imitation of such product" in the second sentence with the words " 'Mechanically Processed (Species)' ".

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

4. Section 319.5(a) and (e) (1) and (2) (9 CFR 319.5(a) and (e)(1) and (2)) would be revised to read as follows:

§ 319.5 Mechanically processed (species).

(a) Mechanically Processed (Species) is any product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses and meeting the other provisions of this paragraph. Examples of such product are "Mechanically Processed Beef", "Mechanically Processed Veal", and "Mechanically Processed Pork". At least 98 percent of the bone particles present in such product shall have a maximum size no greater than 0.5 millimeter in their greatest dimension and there shall be no bone particles larger than 0.85 millimeter in their greatest dimension. The product resulting from the separating process shall not have a calcium content exceeding 0.75 percent, as a measure of a bone solids content of not more than 3 percent, and shall have a minimum PER of 2.5 (except as modified in paragraph (e)(1) of this section). Such product also shall have a protein content of not less than 14 percent and a fat content of not more than 30 percent, or it shall be deemed to be product for processing. Such product failing to meet the bone particle size, calcium or PER requirements of this paragraph shall only be used in producing animal fats. Where such product meets the bone particle size, calcium, and PER requirements of this paragraph, it may also be used in the formulation of meat food products in accordance with § 319.6.

* * * * *

(e)(1) An essential amino acid content of at least 33 percent of the total amino acids present in "Mechanically Processed (Species)" shall be accepted as evidence of compliance with the protein quality requirement set forth in paragraph (a) of this section. The percent of essential amino acid content is calculated as the total of the percentages of isoleucine, leucine, lysine, methionine, phenylalanine, threonine, and valine, divided by the percentage of the toal of isoleucine, leucine, lysine, methionine, phenylalanine, threonine, valine, cystine, tyrosine, arginine, histidine, alanine, aspartic acid, glutamic acid, glycine, proline, serine, and hydroxyproline, and multiplied by 100.

(2) A prerequisite for label approval for products consisting of or containing "Mechanically Processed (Species)" is that such "Mechanically Processed (Species)" shall have been produced by an establishment under an approved plant quality control system. The Administrator shall receive, evaluate, and approve requests for plant quality control in accordance with § 318.4(d)(1) and (2) and (e) of this subchapter. Such a plant quality control system shall provide the controls and information necessary to assure that the product will meet the requirements described in § 319.5(a) and to enable establishment personnel and program employees to monitor the system for effectiveness. The system shall include a written description of the methods used by the establishment to maintain uniformity of the raw ingredients used in manufacturing product, to control the handling and processing of the raw ingredients and the finished product, and shall contain provisions for chemical analyses of the product to determine compliance with standards for the product. For purposes of this paragraph, a lot shall consist of the "Mechanically Processed (Species)" designated as such by the operator of the establishment or his or her agent from the product produced from a single species of livestock in no more than one continuous shift of up to 12 hours. All units of any lot must be available for inspection by program employees. Analysis of a sample of at least 1 pound from each lot to verify contents of fat, protein, and calcium in "Mechanically Processed (Species)" shall be performed by the operator of the establishment or his or her agent to assure that finished product will meet the requirements in

§ 319.5(a), except that such analyses with respect to fat, protein, and calcium content shall be required to be performed with respect to only one randomly selected lot of every five lots if the preceding ten analyses and all such analyses performed by the Department during the preceding ten analyses period establish compliance with the requirements of § 319.5(a), and that no analyses with respect to fat or protein content shall be required where the finished product is represented as product for processing. An analysis of a sample of at least 1 pound to verify content of essential amino acids and protein efficiency ratio in "Mechanically Processed (Species)" shall be performed by the operator of the establishment or his or her agent at the rate of at least one per month during production to assure that finished product will met the requirements of § 319.5(a), except that such analyses with respect to essential amino acid content and protein efficiency ratio shall be required to be performed only once every 6 months if the preceding three analyses and all such analyses performed by the Department during the preceding three analyses period establish compliance with the requirements of § 319.5(a). Finished product samples shall be analyzed in accordance with "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 13th ed., 1980, sections 24.005 (page 376), 24.006 (page 376), 24.017 (page 377), 24.027 (page 379), and 43.212 (page 774) and the "2nd Supplement to the 13th Edition" (Vol. 64, No. 2, 1981), section 24.BO1 (page 509), which are incorporated by reference, or if no AOAC method is available, in accordance with the "Chemistry Laboratory Guidebook," U.S. Department of Agriculture, Washington, D.C., sections 6.009–6.009F (pages 6–31 through 6–34) and 6.010 (pages 6–35 through 6–43). Alternative methods of analysis may be submitted to the Administrator to determine their acceptability based upon their accuracy, repeatability, reproducibility, and lowest level of reliable measurement, as demonstrated by at least 3 laboratories. (Copies of the AOAC methods and the Chemistry Laboratory Guidebook methods may be obtained from: Director, Chemistry Division, Science Program, Food Safety and Inspection Service, U.S. Department of Agriculture, 300 12th Street, SW., Washington, D.C. 20250. This incorporation by reference was approved by the Director of the Federal Register on ————. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register.**) The plant quality control system shall be subject to periodic review, and the approval of such system may be terminated in accordance with § 318.4(g)(2) of this subchapter.

5. Section 319.6 (9 CFR 319.6) would be revised and reorganized to read as follows:

§ 319.6 Limitations with respect to use of mechanically processed (species)

(a) Products required to be prepared from one species shall not contain Mechanically Processed (Species) of any other species.

(b) Mechanically Processed (Species) described in § 319.5 that has a protein content of not less than 14 percent and a fat content of not more than 30 percent may be used in the formulation of any meat food product except those listed in paragraph (d) of this section. Where such Mechanically Processed (Species) having a protein content of not less than 14 percent and a fat content of not more than 30 percent has a calcium content of no more than 0.15 percent, it may constitute up to 100 percent of the livestock and poultry product portion of such meat food product; where it has a calcium content of no more than 0.30 percent, it may constitute up to 50 percent of such portion; where it has calcium content of no more than 0.60 percent, it may constitute up to 25 percent of such portion; and where it has a calcium content of 0.75 percent, it may constitute no more than 20 percent of such portion: *Provided*, That, where such meat food product also contains Mechanically Processed (Species) for processing, the total calcium content of such Mechanically Processed (Species) and such Mechanically Processed (Species) for processing shall be used in determining the amount of such meat food product that Mechanically Processed (Species) may constitute.

(c) Mechanically Processed (Species) for processing described in § 319.5 may constitute up to 20 percent of the livestock and poultry product portion of any meat food product that is subject to a definition and standard of identity or composition in Part 319 which establishes a maximum limit on the fat content of such meat food product except those listed in paragraph (d) of this section.

(d) Mechanically Processed (Species) and Mechanically Processed (Species) for processing described in § 319.5 shall not be used in baby, junior, or toddler foods, ground beef, hamburger, fabricated steaks (§ 319.15(a), (b), and (d)), barbecued meats (§ 319.80), roast beef-parboiled and steam roasted (§ 319.81), corned beef cuts (§ 319.100), lima beans with ham and similar products (§ 319.310), beef with gravy and gravy with beef (§ 319.313), and meat pies (§ 319.500).

§§ 319.15, 319.104, 319.105, 319.141, 319.142, 319.143, 319.144, 319.145, 319.180, 319.182, 319.260, 319.261 319.280, 319.281, 319.300 through 319.307, 319.311, 319.312, 319.600, 319.760 and 319.762 [Amended]

6. Sections 319.15(c) *Beef patties,* 319.104(f) *Pressed ham, spiced ham, and similar products,* 319.105(b)(10) Chopped ham, 319.141 Fresh pork sausage, 319.142 Fresh beef sausage, 319.143 Breakfast sausage, 319.144 Whole hog sausage, 319.145(a) (1)–(3) Italian sausage products, 319.180 (a)–(c) Frankfurter, frank, furter, hotdog, wiener, vienna, bologna, garlic bologna, knockwurst, and similar products, 319.182 Liver sausage and braunsnschweiger, 319.260 Luncheon meat, 319.261 Meat loaf, 319.280 Scrapple, 319.281(a)(1) Bockwurst, 319.300 Chili con carne, 319.301 Chili con carne with beans, 319.302 Hash, 319.303(b)(9) Corned beef hash, 319.304 Meat stews, 319.305 Tamales, 319.306 Spaghetti with meatballs and sauce, spaghetti with meat and sauce, and similar products, 319.307 Spaghetti sauce with meat, 319.311 Chow mein vegetables with meat and chop suey vegetables with meat, 319.312 Pork with barbecue sauce and beef with barbecue sauce, 319.600 (a) and (b) Pizza, 319.760(a) Deviled ham, deviled tongue, and similar products, and 319.762 Ham spread, tongue spread and similar products (9 CFR 319.15(c), 319.104(f), 319.105(b)(10), 319.141–319.144, 319.145(a) (1)–(3), 319.180 (a)–(c), 319.182, 319.260, 319.261, 319.280, 319.281(a)(1), 319.300–302, 319.303(b)(9), 319.304–319.307, 319.311, 319.312, 319.600 (a) and (b), 319.760(a), and 319.762) would be amended by replacing the term "Mechanically Processed (Species) Product" with the term "Mechanically Processed (Species)".

7. Section 319.141 (9 CFR 319.141) would be further amended by replacing the second sentence with the following sentence:

§ 319.141 Fresh pork sausage.

* * * The finished product shall not contain more than 50 percent fat. * * *

8. Section 319.143 (9 CFR 319.143) would be further amended by replacing the second sentence with the following sentence:

§ 319.143 Breakfast sausage.

* * * The finished product shall not contain more than 50 percent fat. * * *

9. Section 319.144 (9 CFR 319.144) would be further amended by replacing the second sentence with the following sentence:

§ 319.144 Whole hog sausage.

* * * The finished product shall not contain more than 50 percent fat. * * *

10. Section 319.160 (9 CFR 319.160) would be amended by replacing the third sentence with the following sentence:

§ 319.160 A Smoked pork sausage.

* * * The finished product shall not contain more than 50 percent fat. * * *

Done at Washington, D.C., on July 23, 1981.

C. W. McMillan,

Assistant Secretary for Marketing and Inspection Services.

APPENDIX A.— U.S. DEPARTMENT OF AGRICULTURE, FOOD SAFETY AND INSPECTION SERVICE— PRELIMINARY REGULATORY IMPACT ANALYSIS OF PROPOSED CHANGE TO MP(S)P REGULATIONS

Purpose

In February 1981, the Department received a Petition from the Pacific Coast Meat Association (PCMA) and the American Meat Institute (AMI), representing their members. Petitioners contend that the industry's failure to market products containing Mechanically Processed (Species) Product (MP(S)P) is due to regulatory requirements which go beyond what is necessary to protect the public, and they ask the Department to reconsider these requirements in light of additional information industry has compiled since the completion of the MP(S)P rulemaking. Based on the above petition and accompanying documents and other information accumulated over the past several years, as well as the importance of taking advantage of all safe and wholesome sources of food, the Department is proposing to amend the MP(S)P regulations as set forth in the foregoing proposal. The amendments have the effect of making the regulation less stringent, thereby generating economic benefits that are described later in this paper.

In compliance with the provisions of Executive Order 12291, regarding Federal regulations, and the Regulatory Flexibility Act (Pub. L. 96–354), dealing with impacts of regulation on small entities, the purpose of the following analysis is to review the impact of proposed revisions in the regulations for MP(S)P (9 CFR Parts 301, 317, 318, and 319). The proposed changes will be assessed with respect to their potential benefits and costs and an estimate of the potential net benefits of the rule changes will be made.

Parts of the proposal pertain to changes for clarifiation or consistency and are not economic in nature nor are they likely to cause any observable cost or benefit. Therefore, they are not analyzed as part of this paper. In order to make the Preliminary Regulatory Impact Analysis (PRIA) somewhat self-contained, the proposed regulation and its justification are summarized throughout. Nevertheless, it is helpful to read the proposed regulatory changes in conjunction with this paper. In addition, it is also helpful to read, in conjunction with this PRIA, "Economic Impacts of Regulations on Mechanically Deboned Red Meats." by J. Bruce Bullock and Clement E. Ward, an AMI-funded study which was submitted with the PCMA–AMI petition. The PRIA draws heavily from the Bullock and Ward study, which contains a more detailed explanation of the derivation of the economic impact estimates as well as the data sources and analytical methodology used than does the PRIA. A copy of the Bullock and Ward study is attached for the readers' convenience.

II. Impacts Summary

This analysis describes, and where possible quantifies, the potential impacts, i.e., benefits and costs, resulting from proposed changes to the MP(S)P regulations. The objective of the proposed changes is to facilitate the production of MP(S)P while continuing to protect the public against adulterated and/or misbranded products.

The proposed changes discussed in this analysis deal with three general areas: (1) labeling, (2) the product standard, and (3) use limits. The following is a summary of the changes being proposed in each of these areas and their potential effects:

1. Labeling

The revisions dealing with labeling involve (i) changing the name of the product to one which provides a more meaningful description of its characteristics, (ii) deleting the requirement that names of meat food products containing MP(S)P must be qualified by a phrase indicating its presence, and (iii) replacing the requirement that the names of meat food products containing MP(S)P must be further qualified by a phrase indicating the product's powdered bone content with a requirement that their labels declare calcium content as part of nutrition labeling or, if there is no nutrition labeling, in a statement in conjuction with the ingredients list.

Adoption of the aforementioned labeling changes would have resulted in potential MP(S)P (beef and pork) production of 87 million pounds in 1979, an increase of approximately 85 million pounds over actual 1979 production. This would have resulted in a net economic gain of $110.7 million.

In addition to this economic gain, which represents an increase in efficiency for the economy, there would have been a change in income distribution. It is estimated that the above labeling requirements would have resulted in a transfer of dollars from producers to processors and consumers of $106 million. This transfer would have occurred because farm level beef and pork prices would decrease as MP(S)P production increases. The result would have been a .07 percent decrease in total farm revenue. It is expected, due to the competitive nature of the food processing industry, that most of the transfer would go to consumers.

This estimate of the income distribution effect is based on an analysis of both the factors that increase and the factors that decrease the value of beef and pork at the farm level as a result of the use of mechanical deboning technology. The part of an animal that will provide raw materials for deboning now has a higher market value because several pounds of edible MP(S)P that would otherwise be sold as inedible byproducts are recovered. On the other hand, the product of MP(S)P increases the supply of red meat and hence reduces the price for beef and pork at the farm level, all other things being equal. The net impact of mechanical deboning technology is a lower price for the livestock because of the relatively large magnitude of the impact of increased meat supplies compared to the impact of the higher market value for part of the carcass.

It is also likely that employment would have risen by approximately 160 jobs from the increased production of MP(S)P in response to these labeling changes.

2. The Product Standard

The second area of proposed revision is that of the product standard. The proposed changes would establish two categories for MP(S)P, one which meets the current fat and protein content requirements and a second as to which there are no fat or protein content requirements. The requirements for maximum bone particle size and bone solids content and an approved quality

control system as a prerequisite for label approval would be retained.

Adoption of both the above fat and protein requirement changes and the aforementioned proposed labeling changes would have resulted in increased production of MP(S)P (beef and pork) in 1979 of 351.7 million pounds, an increase of 350.4 million pounds over actual 1979 production. This increase production would have resulted in a net economic gain of $495 million. However, the proposed change in the fat and protein requirements would not bring about this economic gain if the proposed labeling changes were not also made.

The increase in production would also have an impact on income distribution; i.e., dollars would again be transferred from producers to processors and consumers; most of the transfer is expected to go to consumers. Based on the estimate of 1979 potential production, the amount of this transfer would have been $493 million. As stated above, this transfer is the result of a decrease in beef and pork prices at the farm level. In this case, the transfer is equal to a .3 percent reduction in total farm revenue.

Again, it is likely that the increased production resulting from the above changes would have resulted in an increase in employment; in this case, an estimated 640 jobs.

3. Use Limits

The third area covered by the proposal would revise the limits on the amount of MP(S)P that may be used in meat food products as follows: MP(S)P containing less than 14 percent protein and/or more than 30 percent fat could be used as up to 20 percent of the livestock and poultry product portion of meat food products which are subject to fat limits on the final product; MP(S)P meeting these levels could be used in greater amounts to the extent that its bone content is reduced below the maximum of 3 percent (as measured by a calcium content of 0.75 percent). The regulations would continue not to permit use of the product in baby, junior, and toddler foods as well as in certain meat food products. These use limits are not expected to restrict the supply of MP(S)P because, at the level of production anticipated, there would be adequate markets through the final products in which use in permitted.

Table 1 summarizes the impacts discussed above.

Table 1.—*Summary of Economic Impacts*

Proposed changes	Potential 1979 production [1] (million lbs)	Net economic gain (million dollars)	Impacts	
			Income transfer (million dollars)	Increase in employment (jobs)
Labeling only	87	110.7	106	160
Product standard and labeling	351.7	495	493	640
Use limits—no measurable impact.				

[1] Note that actual FY 1979 beef and pork MP(S)P production was 1.4 million pounds.

Although there are costs associated with production and use of MP(S)P which may exclude small entities, one of the purposes of the proposed changes is to allow the industry to incorporate efficiency improving technology, which will have the primary long term effect of reducing producer costs and expanding business opportunities. The costs which small entities will face to enter the MP(S)P market and to use MP(S)P as an ingredient are not, for the most part, costs resulting from the proposed regulatory changes but are costs associated with entering any market.

An alternative approach is that of "no regulation"; i.e., not imposing any labeling or compositional requirements or use limits. Under such an approach, the product would be declared by its species designation, could contain any amount of bone and bone particles of any size, and could be used at any level in any meat food product regardless of its composition. This aproach has not been selected because of legal constraints, and the fact that it would not result in significant net economic benefits beyond those brought about by the proposed changes. The economic benefits of the "no regulation" option are the same as those for the option being proposed by the Department, but the costs are slightly less. The analysis discussed in the remainder of this paper argues that there are ample outlets for potential supplies of MP(S)P and that the proposed revisions will not constrain the production or marketing of MP(S)P. That is, the Department's proposal contains labeling requirements that are not expected to cause consumers to react negatively to an MP(S)P containing product; it sets forth fat and protein restrictions that will not constrain the potential supply of MP(S)P; and it establishes a use limitation that is also not expected to constrain the supply of MP(S)P, at least not in the near future. Hence, it is reasoned that the proposed revisions will allow the production of MP(S)P to reach the same level as without regulation, and that these revisions will not effect the ability of users to market the products using MP(S)P.

More specifically, each of the above assertions is supported in the following sections of this paper, but what follows immediately is a capsule preview. Regarding labeling, as the docket points out, there is evidence that consumers may draw unwarranted conclusions from the labeling currently required. This has apparently had the unintended consequence of discouraging the purchase of products that consumers would find satisfactory. For example, the current regulations require that the names of all finished products be qualified by a phrase indicating the presence of MP(S)P. In light of the evidence cited above, and, as the docket states, it now appears that this requirement places undue emphasis on a single ingredient even if, as the Department concluded in 1978, this ingredient is unexpected and unique. Furthermore, this labeling approach to a new ingredient simply does not appear to be feasible in an era when advances in food technology regularly result in the modification of existing product formulations to include new forms of ingredients, or even totally new ingredients.

In addition, as the docket states, the Department continues to be concerned about the needs of the small percentage of the population that may require a low calcium intake for medical reasons. However, it is proposed that the qualifying phrase on powdered bone content required by the current regulations be replaced with information on calcuim content. The Department believes that this approach would more directly and effectively notify persons on calcium-restricted diets and that it would do so without the negative effects that the current requirements may have on the evaluation of such products by the general population.

The fat and protein restrictions proposed allow MP(S)Pwhich does not meet the current fat and protein requirements (i.e., product "for processing") to be used in meat food products that are subject to a regulatory definition and standard which limits fat content. This use is subject to a 20 percent limitation of the livestock and poultry portion of a product. There appears to be ample outlets for the potential supplies of "for processing" MP(S)P. For example, regulatory standards limit the total fat content of cooked sausage. The Department estimates that approximately 3.1 billion pounds of product was produced in this category in 1979, of which 2.6 billion pounds was the livestock portion. The

analysis described later in this paper determined that approximately 351.7 million pounds of MP(S)P would have been produced in that same year if the MP(S)P regulations had not required that the product meet maximum fat and minimum protein content levels and that the names of finished meat food products be qualified to indicate the presence of MP(S)P and their powdered bone content. This estimate is just over 13 percent of the livestock product portion of these cooked sausages. Hence, although individual products might be constrained by the 20 percent use limit, it is not likely that use of MP(S)P in general will be. Therefore, to reiterate, the "for processing" category of MP(S)P provides an adequate outlet for MP(S)P not meeting current fat and protein standards.

The differences between the proposed option and "no regulation" with respect to benefits and costs are the cost of quality control when producing MP(S)P and the cost of testing the final product for calcium content when using MP(S)P. The costs of quality control testing, as required by the Department proposal, are estimated to be $1.2 million or .24 percent of the value of the MP(S)P produced. Other costs of quality control, such as reporting costs and management of the process, were not estimated because the requisite information to do so was not available. However, it is believed that these costs will also be quite small relative to the value of MP(S)P produced. The costs of final product testing were not estimated either, but the discussion later in this paper argues that they also are expected to be small. The benefits of quality control and final product testing are summarized briefly throughout the PRIA.

The Federal Meet Inspection Act (FMIA) requires that meat and meat food products in commerce not be adulterated or misbranded and that they be properly labeled. Mechanically processed product differs materially from the category of food traditionally defined as "meat" in its composition and consistency. Therefore, it should be listed separately by a distinctive name in an ingredient statement (a conclusion which the Petitioners do not dispute). Moreover, these differences have potential consequences for finished product quality and health and safety. Therefore, it is necessary to control the labeling, composition, and use of mechanically processed product. See *Community Nutrition Institute, et al. v. Butz (CNI v. Butz)*, Civil Action No. 76-1585 (D.D.C., decided Sept. 10, 1976) for interpretation and application of the adulteration and misbranding provisions of the FMIA to mechanically processed product.

III. Industry Description

According to USDA data presented in Table 2, production of MP(S)P has ranged from .4 million pounds in the period of July through September 1978 to a peak of 2.3 million pounds in FY 1979 to 2 million pounds in FY 1980. Note that July 20, 1978 was the effective date of the current regulations. MP(S)P can be used as an ingredient in numerous meat food products such as beef patties, sausages (fresh and cooked), luncheon meat, scrapple, chili con carne, hash, meat stews, meat spreads, and pizza with meat.

Table 2.—*Production of MP(S)P*

Product	1978[1]	Fiscal year	
		1979	1980
Mechanically processed—			
Beef product	367,620	1,108,641	969,000
Pork product		268,773	160,921
Product other than beef or pork (e.g. veal)	61,400	930,250	955,502
Total	429,020	2,307,664	2,085,423

[1] July to September.
Source: Meat and Poultry Inspection Progam data.

Potential producers of MP(S)P include beefpackers who bone carcasses (such as boxed beef operations, central fabricating warehouses operated by retail food chains and institutional firms), porkpackers, whole hog sausage makers, and speciality firms that buy specific primal cuts (bone-in) for pork items. Some potential suppliers of MP(S)P will produce it for their own use in processed meat food products while others will market it. Potential users of MP(S)P include a broad spectrum of food processors, such as independent sausage makers, beefpackers and porkpackers that conduct further processing operations, and retail and institutional firms that have processing plants. There are three types of costs in producing MP(S)P: the mechanical deboning system itself, raw materials, and processing costs (including labor). According to "Economic Impacts of Regulations on Mechanically Deboned Red Meats," by J. Bruce Bullock and Clement E. Ward, an AMI-funded study which was submitted with the PCMA-AMI petition, a complete mechanical deboning system including new building and equipment could cost $300,000-$500,000. The cost of a deboning machine ranges from $50,000-$200,000. For some deboning systems, larger-sized raw materials must be pre-ground, which could require an additional $15,000-$20,000 piece of equipment. The remaining costs of the system include various support equipment (e.g., conveyors, containers, refrigeration, quality control laboratory) (*1*). These figures were obtained by an industry survey conducted by Bullock and Ward. The complete results of this survey have not been released. In January 1981, USDA staff visited two mechanical deboning operations and a processor who used mechanically processed (veal) product as an ingredient. One of the mechanical deboning operations estimated its equipment costs at $150,000 with an expected life of 10 years.

According to Bullock and Ward, the average cost of raw materials would be no more than 10¢ per pound for usable product and processing costs would range from 25-30¢ per pound, based on reported raw materials prices for 1979 and discussions with owners of mechanical deboning machinery (*2*). The mechanical deboning plant referenced above as visited by USDA staff estimated its total raw material and processing costs at 30-40¢ per pound.

MP(S)P will compete directly with mechanically deboned poultry (MDP) in the processed meat product market. The current average price of MP(S)P is 40¢ per pound based on the site visit noted above. By way of comparison, the current Atlantic coast regional average price of MDP is approximately 23¢ per pound (*3*). Production of MDP has grown since its introduction in the late 1960's. From 1978 to 1979, production increased 29 percent from approximately 255 million pounds in 1978 to approximately 330 million pounds in 1979, when about 95 plants were producing MDP (*4*). MDP is used in a variety of processed poultry products. The usage level of MDP in a product has been, in part, dependent upon technological capabilities, reaching 100% of the poultry component in some poultry sausages. In standardized cooked sausages (e.g., franks and bologna), the poultry product portion is limited to 15% of the total ingredients excluding water (9 CFR 319.180). According to USDA data, 2 billion pounds of hotdogs were sold in 1980, and 13% or 260 million pounds were poultry franks. For purposes of comparison, the price of a pound of red meat frankfurters containing variety meats was $1.71 in February 1981, while the price of a pound of poultry frankfurters was $1.13.

IV. Proposed Regulatory Changes and Their Potential Impacts

The following analysis reviews the proposed changes in the MP(S)P

regulations and their potential impacts. In addition, alternative approaches and their potential impacts are discussed with an explanation as to why such alternatives are not being proposed. For clarity, the proposed changes will be grouped into three major areas: (1) labeling, (2) the product standard and (3) use limits.

Labeling

The following discussion assesses the potential impacts of the proposed labeling changes, focusing on consumer acceptance of the products containing MP(S)P and the need for accurate and nonmisleading labeling.

Product Name.—The name of the product would be changed to one which provides a more meaningful description of its characteristics. The options under consideration include "Mechanically Separated (Species)," "Mechanically Deboned (Species)," "Mechanically Recovered (Species)" and "Mechanically Processed (Species)". Alternative names submitted with supporting data, views, and arguments will be considered during the comment period.

Product Name Qualifier.—The requirement that the names of all meat food products must be qualified to indicate the presence of MP(S)P would be deleted, with possible exceptions. The argument here is that the qualifier places undue emphasis on a single ingredient and that listing the product in the ingredients statement would generally provide sufficient notice that it is present. The Department will consider retaining this requirement in particular situations if comments submitted with supporting data, views, and arguments demonstrate that the presence of mechanically processed product as an ingredient or its use at certain levels significantly alters the basic identity of a particular meat food product and may be false or misleading.

Powdered Bone Qualifier.—The requirement that the names of meat food products containing MP(S)P must be further qualified by the phrase "Contains Up To —% Powdered Bone" would be deleted. Instead, calcium content would be declared as follows: (i) as part of the nutrition labeling information, or (ii) if the meat food product does not bear nutrition labeling, in a prominent statement in immediate conjunction with the ingredients list. It was determined by the Panel which reviewed the health and safety aspects of the use of MP(S)P that although the calcium which would be added to the diet by MP(S)P is not so great in amount as to pose a hazard to the health of most people, a small percentage of the population may require a low calcium intake for medical reasons. The powdered bone disclosure was required to provide information to these persons. Thus, the proposed declaration would more directly and effectively communicate to calcium-sensitive persons the presence of increased amounts of calcium when the amount to be declared would be greater than in products made solely with hand deboned ingredients.

The Department is considering other options to convey information on calcium. These options include limiting label information to an ingredients list declaration of the fact that the product contains calcium and/or an informational campaign on the calcium containing characteristics of the product. For example, an informational campaign capable of being carried out within the current Department budget would develop a letter concerning the calcium content of MP(S)P to notify concerned health professionals. This letter will be sent to the journals of the major dietician-nutritionist professional organizations and to medical-specialty journals. A chart comparing the calcium per serving in milk, a green leafy vegetable, and several processed meat products—with and without MP(S)P—will be enclosed with the letter.

Potential Impacts From Proposed Labeling Changes

The Petitioners, PCMA and AMI, argue that the primary restraints on potential demand for mechanically deboned products are the present requirements that the names of final products be qualified to indicate the presence of MP(S)P and their powdered bone content.

They contend that the term MP(S)P is confusing to consumers and does not adequately inform them what MP(S)P actually is; that once consumers know what MP(S)P is, most believe it is unnecesssary to emphasize the mechanical deboning process if the product is safe and nutritious; and, that most consumers react negatively to the emphasis of powdered bone on a product label. The Petitioners' argument is based on 1980 consumer focus group research commissioned by PCMA and conducted by Market Research Services as well as earlier consumer research prepared for the Gerber Products Co.

There are no substantial costs associated with the proposed labeling changes. The costs of introducing new labeling—label redesign, plate change, and overhead and approval costs—are estimated by the Department to range from $500 to $2,500 per label change depending on such factors as the number of changes necessary and type of materials. As there are few products now being made with MP(S)P, there are few labels in existence. Therefore, these do not represent costs resulting from the proposed changes, but costs of deciding to use MP(S)P. Petitioners contend that what they consider to be misleading labeling for MP(S)P containing products has effectively precluded their marketing.

It is assumed that the proposed changes dealing with labeling will have a positive effect on small processors who presently use machanically deboned product as a raw material in their meat food products. While the costs of new labeling may be a greater burden for small processors, this is true whenever a small business enters a market or utilizes a different ingredient and is not a specific effect of the proposed regulations.

According to Bullock and Ward, under a policy which relaxes the current labeling requirements (with current fat and protein requirements remaining in effect), the estimated potential production of MP(S)P in 1979 would have been 87 million pounds, 30.7 million pounds of beef product and 56.4 million pounds of pork product. This estimate assumes that 75 percent of federally inspected cow slaughter and 60 percent of each of the other classes of livestock eligible to be deboned would have been deboned. The assumption is based on discussions with industry representatives. Institutional and economic reasons (for example, high costs of transporting some of the raw material) prohibit the use of all carcasses from which MP(S)P can be produced (*5*). According to USDA figures, the actual production of beef and pork MP(S)P in fiscal year 1979 was 1.4 million pounds; 1.1 million pounds of beef and .3 million pounds of pork. Thus, under the Bullock and Ward analysis, approximately 85 million pounds of mechanically processed beef and pork was not produced as a result of the present labeling requirements.

One of the significant impacts of the proposed changes will be the impact on economic efficiency. Economic efficiency refers to the net economic gain that will accrue from adopting the mechanical deboning technology for red meat carcasses. The net economic gain to consumers from mechanically deboning livestock carcasses can be estimated by multiplying an average retail price for meat (*6*) by the amount of MP(S)P that is likely to be produced and then deducting production costs and an allowance for profit. Using the estimate stated above for potential 1979 MP(S)P

production, the potential net economic gain is estimated at $110.7 million, $55.3 million for beef and $55.3 million for pork. This estimate is approximately $37 million less than Bullock and Ward's because they make no allowance for processing costs or profit in this case, i.e., the case of a labeling change only (*7*).

The annual average retail prices used for beef and pork were $2.25 per pound and $1.43 per pound respectively. In addition, this estimate assumes production costs of 40¢ per pound (10¢ per pound for raw materials and 30¢ per pound for processing costs) and a profit allowance of 5¢ per pound (*8*). Thus, the net economic gain to consumers would have been $110.7 million and the gain to processors in the form of increased profit $4.4 million, i.e. 5¢ profit times 87 million pounds. (For illustration of methodology, see Appendix 1.)

The use of mechanical deboning technology would also have a significant impact on income distribution. In other words, there would be a transfer of income from producers to processors and consumers as a result of using this new technology. Increased production of MP(S)P would increase the overall livestock product supply. On the other hand, the value of beef and pork at the farm level is increased by recovering edible MP(S)P that would otherwise be sold as inedible byproducts. However, the effect of the increased meat supplies more than offsets this increased value, therefore lowering live cattle and swine prices and decreasing total farm income.

Processors would benefit from being able to make and use relatively less expensive raw materials, and consumers would benefit from lower meat food product prices. The consumer is expected to receive most of this transfer due to the competitive nature of the food processing industry. That is, the processors are expected to pass along their transfer gain. The Bullock and Ward analysis can be used to estimate that the increased production would have resulted in price decreases of 12¢ per hundredweight for live cattle and 25¢ per hunderdweight for live swine in 1979. Spread across 35,103 million pounds of live cattle and 25,425 million pounds of live swine (*9*), the decrease in total farm revenue would have been $106 million, $42 million for live cattle and $64 million for live swine. This is a .07 percent decrease in total farm revenue, based on USDA's estimate of 1979 total farm revenue of $150 billion. (For illustration of methodology, see Appendix 2.)

Although it is not possible to estimate the direct effect of this transfer on small farms, we do not expect that there will be a large enough impact to force any small farm out of business. Again, we are talking about less than a 1¢ per pound decrease in live cattle and swine prices and less than .1 percent decline in total farm revenue.

The U.S. Meat Import Law (*10*) would not operate to offset the revenue loss to producers. While this law tends to reduce the level of certain meat imports (fresh, chilled, and frozen beef, veal, mutton and goat, but not pork) whenever the domestic supply of meat increases, a change in meat supplies is measured by a change in the total weight of carcasses produced. Increased production of MP(S)P would occur without any increase in carcass weight since the mechanical deboning technology is capturing edible product from portions of existing carcasses that would otherwise be rendered. Hence, increased production of MP(S)P does not result in an increase in the domestic meat supply as defined by the U.S. Meat Import Law. Therefore, the Meat Import Law will not provide relief from the revenue loss to producers.

An increase in production of mechanically deboned product is also expected to result in a net increase in employment opportunities. As the raw material for mechanically processed product is what remains of the carcass after traditional hand deboning, employment in hand deboning operations should not be affected by an increase in mechanical deboning. That is, at the current state of the art, mechanical deboning would not replace hand deboning. Moreover, as hand deboned meat has a higher market value than MP(S)P, it would not be economically desirable to decrease the amount of hand deboned meat in order to increase raw materials available for mechanical deboning. However, an increase in mechanical deboning will result in a reduction in the amount of material that is sold for rendering because mechanically deboned product would command a higher price than the products made by rendering. Thus a decrease in employment in rendering plants would be expected.

According to Bullock and Ward, based on their previously mentioned industry survey, a complete MP(S)P processing system requires 1–6 new employees, depending on layout of the system, type of equipment, operating volume and other factors (*11*). USDA estimates that the typical operation would engage 4 employees and produce approximately 45,000 pounds of MP(S)P weekly. Assuming that such a plant operates 8 hours per day, 5 days per week, it will produce 2.25 million pounds of MP(S)P in a 50-week year. Thus, to produce 87 million pounds of MP(S)P, the estimated amount foregone in 1979 under current labeling requirements, it would require approximately 40 plants employing 160 workers.

The Product Standard

Fat and Protein Content Requirements.—The definition and standard for MP(S)P would be amended to include two categories of product: (i) product which meets the current fat (maximum 30%) and protein (minimum 14%) content requirements (which could be used in any meat food product in which use of MP(S)P is currently permitted) and (ii) product which does not meet the current fat and protein content requirements (i.e., product "for processing," which could be used only in meat food products that are subject to a regulatory definition and standard which limits fat content). These categories would be reflected on the label of the product.

The Department set requirements for fat and protein content to assure a standardized product of high nutritional quality. The purpose of the proposed change is to allow greater flexibility where regulations covering finished products and controls on MP(S)P production already provide adequate protection. While processors may be able to market finished products which contain somewhat less protein than traditional meat food products, the Department does believe that the quality control requirements and the 20% use limitation will assure that these products continue to be reasonably good sources of protein.

Regulatory standards limit the total fat content of a number of final meat food products, (e.g., fresh beef sausage, Italian sausage products, cooked sausage (includes frankfurter, hotdog, bologna, etc.)). The Department estimates that approximately 3.1 billion pounds of product was produced in the cooked sausage category alone in 1979 (*12*). The livestock product portion of this product constitutes about 85 percent of the total product, or 2.6 billion pounds (85% of the 3.1 billion pounds of cooked sausage produced in 1979). According to Bullock and Ward, approximately 351.7 million pounds of mechanically processed product would have been produced in that same year if the MP(S)P regulations had not required that the product meet maximum fat and minimum protein content levels and that the names of finshed meat food products be qualified to indicate the presence of MP(S)P and their powdered bone content (*13*). This estimate is just over 13

percent of the livestock product portion of these cooked sausages. The amended regulations would permit use of product for processing as up to 20% of the livestock and poultry portion in this cooked sausage category as well as in the other meat food products with final fat limits mentioned above; and they would amend four other meat food product standards which currently limit fat content by setting a maximum on the amount of trimmable fat that any lot may contain (9 CFR 319.141, 319.143, 319.144, and 319.160) to establish an analytical limit for finished products, thus adding to the outlets for product for processing. In addition, these regulations would permit the use of product meeting the current fat and protein requirements at even higher levels in all meat food products in which MP(S)P may be used. Therefore, there appears to be ample outlets for potential supplies of MP(S)P.

Bullock and Ward claim that many raw materials from fed cattle, upper grade cows, barrows, gilts and sows produce MP(S)P that exceeds the current fat content limit or fails to meet the minimum protein requirement (*14*). Processors mix ingredients to obtain finished products which meet fat content limits, using some livestock ingredients with fat contents above and below the specified level. Under the proposed regulations, mechanically processed product could be included as one such livestock product ingredient.

Potential Impacts of Changes to Fat and Protein Content Requirements.—Bullock and Ward argue that the current fat and protein requirements are effective constraints on MP(S)P production. They calculate that removing the requirement that the names of finished meat food products be qualified to indicate the presence of MP(S)P and their powdered bone content, while keeping the fat and protein content requirements, would have regained only approximately 30% of the potential net economic benefit from MP(S)P production. This calculation is based on estimates of net economic gain which do not allow for profit, and, in one case, raw material and processing costs; and is, therefore, too high. According to USDA computations, removing the labeling requirements would regain approximately 22% of the potential net economic benefit from MP(S)P production. This estimate is derived using $495 million for net economic gain assuming adoption of the proposed labeling and fat and protein restriction changes and $110.7 million for net economic gain assuming adoption of only the proposed labeling changes, i.e., $110.7 is 22% of $495.

Bullock and Ward estimate that removing the labeling and the fat and protein content requirements would have resulted in potential production of 351.7 million pounds of MP(S)P in 1979; 193.8 million pounds of beef and 157.9 million pounds of pork. This estimate again assumes that 75% of federally inspected cow slaughter and 60% of each of the other classes of livestock eligible to be deboned would have been mechanically deboned (*15*). As stated earlier, they contend that the current labeling requirement for products containing MP(S)P has been the limiting factor in determining how much MP(S)P is produced, and the entire economic cost (loss of potential production and associated economic benefit) of the current regulation can be attributed to the existence of the labeling requirement for MP(S)P products. Thus, as consumers will not be as likely to buy a product with the current required labeling, removing the fat and protein content requirements without removing the labeling requirements will not increase production by the difference between potential production assuming removal of both the labeling and the fat and protein content requirements (351.7 million pounds) and potential production assuming removal of only the labeling requirements (87 million pounds).

As stated earlier, one of the significant impacts of the proposed change would be the impact on economic efficiency or net economic benefit. Again, this estimate is obtained by multiplying an average retail price for meat by the amount of MP(S)P that is likely to be produced. Bullock and Ward estimate that the net economic value to consumers of potential MP(S)P production is $513 million, $353 million for beef and $160 million for pork product (*16*). Raw material and processing costs of $141 million have been subtracted out. At a profit of 5¢ per pound, not taken into account by Bullock and Ward, total profit on the 351.7 million pounds cited above would have been $18 million. Hence, the net economic gain to the consumer would be $495 million and the gain to processors in the form of increased profit would have been $18 million, i.e., 5¢ profit times 351.7 million pounds. The annual average retail prices used for beef and pork were $2.23 per pound and $1.42 per pound respectively. These prices are slightly lower than those used earlier in estimating the impact on economic efficiency for the proposed labeling changes. The reason for this is that the larger volumes of mechanically deboned beef and pork in this case (193.8 million pounds of beef and 157.9 million pounds of pork compared to the label change only case with 30.7 million pounds of beef and 56.4 million pounds of pork) bring about a further reduction in prices as a result of supply and demand forces. (For illustration of methodology, see Appendix 1.)

The impact on income distribution was also assessed with regard to the above assumptions. Bullock and Ward estimate that the use of MP(S)P technology at the above production rate of 351.7 million pounds would decrease live cattle and swine prices by a little less than $.01 per pound, a decrease of 86¢ per hundredweight for live cattle and 75¢ per hundredweight for live swine (*17*). Note that assuming only the labeling changes, increased production of livestock products would result in a decrease in live cattle prices of 12¢ per hundredweight for live cattle and 25¢ per hundredweight for live pork. Spread across 35,103 million pounds of live cattle and 25,424 million pounds of live swine (*18*), this larger price decline would result in a decrease in total farm revenue of $493 million, $302 million for beef producers and $191 million for pork producers. This is a .3% reduction in total farm revenue based on the USDA estimate of $150 billion for 1979 total farm revenue, and assuming all other market variables remained at the same level. As stated earlier, processors would benefit from being able to make and use a relatively less expensive raw material and consumers would benefit from lower meat food prices. (For illustration of methodology, see Appendix 2.) Due to the competitive nature of the food processing industry, it is expected that most of the $493 million transfer would go to consumers.

Employment opportunities would increase. Adopting the previously used methodology, a plant operating 8-hours a day, 5 days a week, 50 weeks a year would produce 2.25 million pounds of MP(S)P. Using Bullock and Ward's estimate for potential 1979 production of 351.7 million pounds of MP(S)P, it is estimated that 160 plants or 640 jobs would have been created in 1979.

Quality Control.—Production of MP(S)P under an approved quality control system would be retained as a prerequisite for label approval. The purpose of the quality control system is to provide the controls and information necessary to assure that this product meets the requirements in the standard. The system must include provisions to control handling and processing of raw materials and MP(S)P and for chemical

analyses to determine compliance of the MP(S)P with compositional requirements. The burden on plants for conducting these tests to comply with quality control regulations varies according to the variety of mechanically processed product produced by the plants as the analytical requirements apply to each type of product produced. (Plants may pay private laboratories to conduct tests or they can conduct these at their own laboratory.) Average test prices by private laboratories are as follows: protein—$10, fat—$15, calcium—$20 to $25, and essential amino acid—$150 to $200 (*19*).

With respect to fat, protein, and calcium content, if a plant establishes compliance with the requirements for ten consecutive analyses, and with all analyses performed by the Department during this period, then the plant is required to perform such fat, protein, and calcium content analyses once every five lots. If compliance is not established, plants must perform such analyses once every lot. With regards to essential amino acids and protein efficiency ratio (PER) analyses, if a plant establishes compliance with the requirements for three consecutive analyses, and all analyses performed by the Department during this period, then the plant is required to perform an essential amino acid or PER analyses once every six months. If compliance is not established, tests must be performed at least once per month. At this point in time, due to the cumbersome and costly nature of the PER assay, regulations permit use of an essential amino acid content of at least 33% of total amino acids present as evidence of compliance with the minimum protein quality requirement.

Assuming a plant produces one lot of mechanically processed product containing not less than 14% protein and not more than 30% fat per day, 5 days a week, 50 weeks a year, minimum and maximum quality control costs can be estimated as follows:

Minimum: fat, protein, and calcium—once every five lots; $2,725 per year
amino acids—once every six months
Maximum: fat, protein, and calcium—once every lot; $12,575 per year amino acids—once per month

These estimates are high because: (i) per test costs go down as the number of tests contracted for goes up, (ii) no analysis with respect to fat or protein content would be required for product for processing, (iii) it is probable that at least some firms will mechanically debone carcasses only on a part-time basis, and (iv) the maximum figure probably would not be reached because plants will find it inefficient and costly when compliance is not established and will therefore avoid such a situation. Other costs of quality control such as reporting costs and management of the process, were not estimated because the requisite information to do so was not available.

Assuming adoption of the proposed labeling changes, it would have required 40 plants, operating 8 hours a day, 5 days a week, 50 weeks a year to produce the Bullock and Ward 1979 estimated potential production level of 87 million pounds. Using the average yearly cost of $7,650 (average of maximum and minimum costs) which a plant must face for the quality control system, the aggregate yearly cost for the 87 million pounds of MP(S)P product would be $.3 million or .27 percent of $110.7 million, the value of the product at this level of production. Assuming adoption of the proposed labeling and fat and protein content changes, it would have rquired 160 plants to produce the Bullock and Ward 1979 estimated potential production level of 351.7 million pounds. Using the average yearly cost of $7,650 which a plant must face for the quality control system, the aggregate yearly cost of producing the 351.7 million pounds of MP(S)P product would be $1.2 million or .24% of $495 million, the value of the product at this level of production.

Small businesses producing MP(S)P are not likely to experience any substantial adverse effects from the proposed regulatory changes, which would reduce the restrictiveness of the MP(S)P regulations and expand business opportunties. Although there are costs associated with the production of MP(S)P (e.g., equipment, labor, and quality contol) which may make it economically infeasible for some small producers, one of the purposes of the proposed regulation changes is to facilitate the adoption of efficiency improving technology. The long-term effect of changing these regulations is the spread of new technology and reduced producer costs. The costs which small producers will face to enter the MP(S)P market are not costs resulting from the proposed regulatory changes but are costs associated with entering any market. Furthermore, quality control costs such as the laboratory testing costs associated with production of MP(S)P under this proposed regulation are so small as not to be major determinants of a small firm's decision to enter the market.

In addition to the quality control costs associated with the production of MP(S)P, there are potential costs tied to the use of MP(S)P. The proposed changes require that the labels of meat food products containing MP(S)P declare calcium content if the percent of the U.S. RDA of calcium to be declared differs from the percent of the U.S. RDA that would be declared if the product contained only hand deboned ingredients. One way to determine calcium content is a laboratory test of the final product. As stated earlier, the average cost of this calcium test is $20 to $25. It is difficult to estimate how often this test would be performed on the final product and, therefore, what the aggregate cost of this testing would be. One reason is that the final product maker may be able to control this calcuim level by means of formulation. That is, the level may be determined by knowing the amounts and calcium content of ingredients used in the final product.

The statements that appear above with respect to small firms and the quality control costs of producing MP(S)P also apply to the case of small firms using MP(S)P in the manufacture of final products. That is, for example, any costs of testing the final product for calcuim content should be so small as not to be major determinants of a small firm's decisioin to enter the market. Furthermore, as stated earlier, the Department is considering: (i) restricting supplementary labeling information to a parenthetical declaration, in the ingredient statement, of the fact that mechanically processed product is a calcium-containing ingredient (which would not require chemical analysis of the final product); and/or (ii) relying on an informational campaign about the calcuim-containing characteristic of mechanically processed product to meet the needs of persons on calcium restricted diets.

Use Limits

The proposal would revise the limits on the amount of mechanically processed product that may be used as an ingredient as follows:

(1) The maximum usage level of product that contains at least 14% protein and not more than 30% fat would depend on its calcium content as a measure of its bone content. Where product contains the maximum calcium level permitted—0.75%, the current 20% use limit would continue to apply; but where calcium content is reduced, breater amounts could be used (i.e., product that has a calcium content of no more than 0.15% could constitute up to 100% of the livestock and poultry product portion; product that has a calcium content of no more than 0.30%

could constitute up to 50% of such portion; product that has a calcium content of no more than 0.60% could constitute up to 25% of such portion. This would provide an incentive for the development of machinery capable of producing product with a lower bone content.

(2) Product for processing (i.e., product that contains less than 14% protein and/or more than 30% fat) would be subject to the current 20% limitation. (Where product for processing is used as an ingredient, its calcium content would be taken into account.)

In addition, the Department would continue to prohibit use of MP(S)P in certain meat food products, and product for processing could only be used in meat food products that are subject to a definition and standard of identity or composition which establishes a maximum limit on the fat content of the finished product.

These proposed amendments would provide for the development of meat food products containing higher levels of mechanically processed product where limits on calcium, fat, and protein content can be relied upon to prevent potential health and safety problems and maintain the nutritional quality of finished products. Thus, processors would have greater flexibility to explore the possibilities for new products that might be acceptable to consumers.

While the current 20% use limit might become a constraint for some individual products, it is not likely to become an effective constraint on total production and use in the near future. Bullock and Ward state that because the upper limit on MP(S)P production established by carcass supplies (i.e., available raw materials) is less than the amount that currently can be used in processsed meat products, the 20% limit is not a constraint. At maximum possible output, MP(S)P could account for only about 14% of processed beef products and 15%of processed pork products (*20*).

Appendix 1.—Economic Efficiency

The net economic gain from mechanically deboning livestock carcasses can be estimated by multiplying an average retail price for meat times the amount of MP(S)P that is likely to be produced, and then subtracting production costs, as well as an allowance for profit. The price for meat food products should reflect the change that has taken place as a result of more MP(S)P being on the market. Figure 1 illustrates how the price of meat food products changes (from P_o to P_1) as a result of a shift in the supply curve for such products from (S_o to S_1), with the quantity being consumed increasing to Q_1. Note that there is no shift in demand, but instead there is a movement along the demand curve (from B to C).

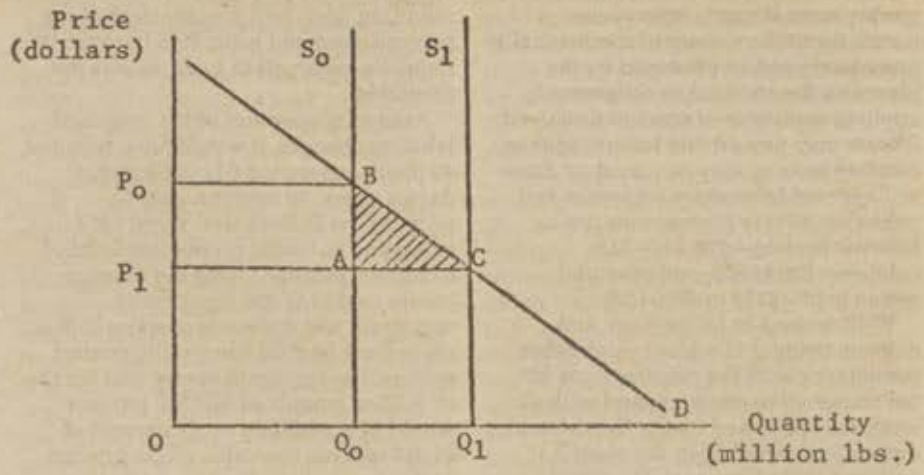

Figure 1

The estimate of net economic gain that is arrived at by the above-described method is equal to the area Q_o ACQ$_1$ minus the cost of producing the MP(S)P. This is actually a lower bound on the real gain because it excludes the shaded area ABC.

The position and the shape of the demand and supply curves shown is for illustration only. The important parts of this figure are points B and C since these points establish the prices and quantities before and after the regulatory changes.

Appendix 2.—Income Distribution

The value of the dollar transfer from producers to processors and consumers of increased MP(S)P production is illustrated below:

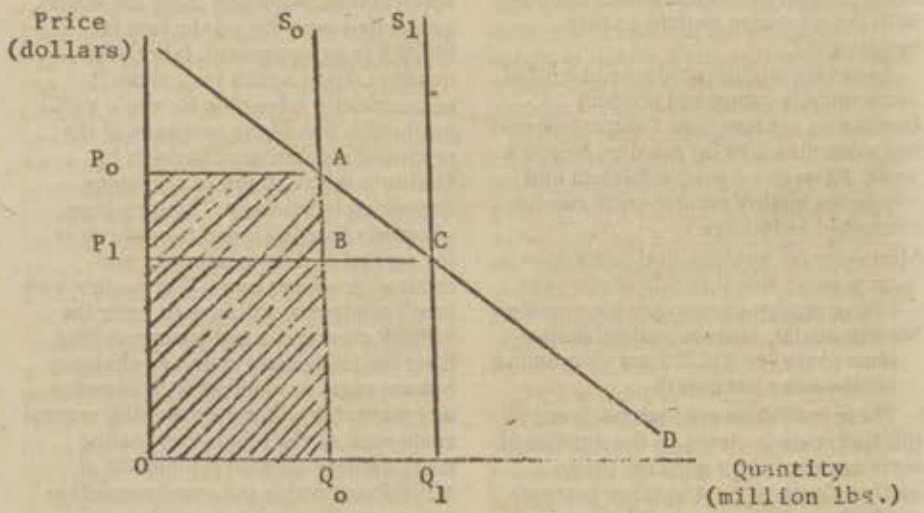

Figure 2

The shaded area $OP_o AQ_o$ represents the total revenue to beef and pork producers in the absence of the production of MP(S)P. The area $OP_1 CQ_1$ represents the total revenue of beef and pork product producers after MP(S)P is produced and marketed at a greater than current level. The difference between these two areas ($OP_o AQ_o$ minus $OP_1 CQ_1$) is the amount of the transfer.

This estimate of the income distribution effect is based on an analysis of both the factors that increase and the factors that decrease the value of beef and pork at the farm level as a result of the use of mechanical deboning technology. The part of an animal that will provide raw materials for deboning now has a higher market value because several pounds of inedible MP(S)P that would otherwise be sold as inedible byproducers are recovered. On the other hand, the production of MP(S)P increases the supply of red meat and hence reduces the price for beef and pork at the farm level; all other things being equal. The net impact on mechanical deboning technology is a lower price for the livestock because of the relatively large magnitude of the impact of increased meat supplies compared to the impact of the higher market value for part of the carcass (*21*).

Again, the position and shape of the demand and supply curves shown is for illustration only. The important parts of this figure are points B and C since these points establish the prices and quantities before and after the regulatory changes.

References

(*1*) "Economic Impacts of Regulations on Mechanically Deboned Red Meats," J. Bruce Bullock and Clement E. Ward, 1980, page 26.
(*2*) Bullock and Ward, *op. cit.*, page 36.
(*3*) Poultry Market News Branch, Agricultural Marketing Service, USDA.
(*4*) These data are based on a mail survey by the Meat and Poultry Inspection Program of federally inspected establishments that further process poultry and production estimates for six plants that declined to respond.
(*5*) Bullock and Ward, *op. cit.*, page 33.
(*6*) *Livestock and Meat Situation*, May 1980.
(*7*) Bullock and Ward, *op. cit.*, page 38.
(*8*) *Ibid.*, page 36.
(*9*) Derived from Bullock and Ward study and comparable with current figures in USDA outlook and situation reports.
(*10*) U.S. Meat Import Law, PL 96-177, Meat Import Act of 1979.
(*11*) Bullock and Ward, *op. cit.*, page 27.
(*12*) USDA Data.
(*13*) Bullock and Ward, *op. cit.*, page 34.
(*14*) *Ibid.*, page 8.
(*15*) *Ibid.*, page 34.
(*16*) *Ibid.*, page 37.
(*17*) *Ibid.*, page 46.
(*18*) Derived from Bullock and Ward study and comparable with current figures in USDA outlook and situation reports.
(*19*) USDA, FSIS, Science Program.
(*20*) Bullock and Ward, *op. cit.*, pages 8, 13.
(*21*) *Ibid.*, page 43.

Preliminary Regulatory Impact Analysis of Proposed Changes to MP(S)P Regulations.

Agency Clearances:

Dated: June 16, 1981.

V. H. Berry,

Deputy Administrator, Meat and Poultry Inspection Program.

Dated: June 16, 1981.

John W. McCutcheon,

Director, Policy and Program Planning.

Dated: June 18, 1981.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

Request for Approval of Preliminary Regulatory Impact Analysis:

Title: Proposed Changes to MP(S)P Regulations

To: Assistant Secretary for Marketing and Transportation Services

Dated: June 24, 1981.

Through:

Stephen B. Dewhurst,

Director, OBPE.

Dated: July 1, 1981.

Through:

William Lesher,

Assistant Secretary for Economics.

Dated: June 18, 1981.

From:

Donald L. Houston,

Administrator, FSQS.

Dated: July 6, 1981.

Approved:

C. W. McMillan,

Assistant Secretary for Marketing and Transportation Services.

Appendix B.—Before the U.S. Department of Agriculture—Citizen Petition of Pacific Coast Meat Association and the American Meat Institute

Pacific Coast Meat Association, Inc., a regional trade association with its principal office at 995 Market Street, San Francisco, California 94103 and the American Meat Institute, a national trade association with its principal office at 1700 N. Moore Street, Arlington, Virginia 22209, submit this petition on behalf of their members who are meat packing and processing companies, which are effectively precluded from producing or marketing mechanically deboned beef, pork, or veal or lamb by the misleading labeling and the unreasonable compositional standards imposed by existing USDA regulations, 9 CFR 317.2(j)(13) and 319.5(a).

The Associate Administrator of the Food Safety and Quality Service has described the existing regulation as "extraordinarily burdensome." *Food Chemical News*, June 16, 1980, p. 39. The former Assistant Secretary for Food and Consumer Services has stated she was "prepared to go ahead with a regulation which removed the powdered bone statement" and which referred to the ingredient as "mechanically processed meat." *Food Chemical News*, January 19, 1981, pp. 55–56. Petitioners agree with these officials that this is a burdensome regulation which should be substantially modified.

The petitioners request that the United States Department of Agriculture exercise its authority contained in Sections 1(n), 3, and 7(b) and (c) of the Federal Meat Inspection Act, 21 U.S.C. 6012(n), 603 and 607(b)(c) to amend the compositional standards and labeling requirements for Mechanically Processed (Species) Product, 43 FR 26416, June 20, 1978, 9 CFR 317.2(j)(13), 319.5(a) and 319.6.

I. Action Requested

The petitioner requests that the United States Department of Agriculture amend the labeling and compositional standards required for Mechanically Processed (Species) Product in the following particulars:

(A) The ingredient resulting from the mechanical separation of meat from bone shall be designated as "Mechanically Deboned Meat," a name which is clearer and more understandable to consumers than the phrase presently required, "Mechanically Processed (Species) Product." Mechanically Deboned Meat is the common or usual name by which the ingredient is known in the United States.

(B) Require that the presence of Mechanically Deboned Meat be declared only in the ingredient statement consistent with the labeling requirements of the Federal Meat Inspection Act, 21 U.S.C. 601(n)(9)(B) and the regulations promulgated thereunder, 9 CFR 317.2(c)(2).

(C) Require a declaration of calcium content in lieu of a declaration of powdered bone, either in the ingredient statement or as part of any nutrition label; but require such declaration only where the quantity of calcium in the meat portion of the product is a nutritionally significant portion of the Recommended Daily Allowance [RDA].

(D) Require that the meat portion of products containing Mechanically Deboned Meat have a total calcium content of not more thant ¼% in lieu of the present provision that provides that MP[S]P may constitute no more than 20% of the meat portion of a product.

(E) Delete the minimum protein and maximum fat specifications contained in 9 CFR 319.5.

Labeling [9 CFR 317.2(j)(13)]

The petitioners request that 9 CFR 317.2(j)(13) be amended to read as follows:

When any 'Mechanically Deboned Meat' described in § 319.5 of this subchapter is used as an ingredient in the preparation of a meat food product, the ingredient statement shall include in proper order of predominance the ingredient name 'Mechanically Deboned ———,' depending on the species, and where the quantity of calcium in the meat portion of the product constitutes a nutritionally significant portion of the Recommended Daily Allowance (RDA), the ingredient statement shall include a parenthetical statement of calcium content, or if the product in which the mechanically deboned ingredient is contained bears nutrition labeling, the calcium content of the product must be declared as part of that nutrition labeling instead of in the ingredient statement.

* * * * *

Compositional Standards [9 CFR 319.5 and 319.6]

The petitioners further request that § 319.5 be revised by deleting the requirements for "a minimum protein content of not less than 14.0%," and for "a fat content of not more than 30%," and by substituting the term "Mechanically Deboned Meat" for the term "Mechanically Processed (Species) Product," wherever that latter term presently appears. The petitioners further recommended that the Department re-examine the particle size limitations in reference to proposed Canadian requirements.

The petitioners request that § 319.6(a) and (b) be amended to read as follows:

§ 319.6 Limitations with respect to use of Mechanically Deboned Meat.

(a) When the Mechanically Deboned Meat described in § 319.5 is used as an ingredient in meat food products, the finished product shall be labeled in accordance with § 317.2(j)(13) of this subchapter. Products required to be prepared from meat or meat byproducts of one species may contain Mechanically Deboned Meat only of the same species.

(b) Meat food products containing Mechanically Deboned Meat shall have a total calcium content contributed by the meat component not exceeding ¾ percent.

Finally, the petitioners request that throughout 9 CFR Part 319, wherever the term "Mechanically Processed (Species) Product" presently appears, that section be amended by substituting therefor the term "Mechanically Deboned Meat."

II. Statement of Grounds

(A) Background. Since the promulgation of USDA's Mechanically Processed (Species) Product regulations 32 months ago, insignificant quantities of this product have been produced or marketed. In fact, less than 1% of the potential supply of MP(S)P has been produced. The failure to produce MP(S)P has occurred in spite of the fact that meat packers and processors have invested approximately $30 million in equipment for the production of mechanically deboned meat. Consequently, one can only conclude that the limited production of MP(S)P is attributable to the unreasonably restrictive compositional requirements and misleading labeling requirements.

In April 1979, one of the petitioners here, Pacific Coast Meat Association, Petitioned for modification of 9 CFR 317.2(j)(13) and 319.5(a). The Department denied Pacific Coast's petition stating:

We are open to resubmittal of your arguments with compelling evidence on (1) the effects of the present regulation and your proposed regulation on consumer preference, (2) the economic effects of widespread use of mechanically processed meat, (3) industry's capability of producing and utilizing the product, and (4) the question of whether the proposed labeling would be false or misleading in any particular to consumers or other purchasers of the product.

In the 18 months since submittal of the petition, Pacific Coast and the American Meat Institute have at substantial expense and effort obtained additional information regarding consumer preferences and consumer perceptions, together with a comprehensive economic analysis regarding the effects of MDM use. That material as well as the experience gained over the past 32 months since promulgation of the MP(S)P regulation forms the basis for the changes requested in this petition.

In addition, recent statements of the Associate Administrator and the former Assistant Secretary indicate that the Department has reason to believe the burdensome nature of the present regulation requires a change.

In remarks in Washington, D.C. on June 12, 1980, the Associate Administrator of the Food Safety and Quality Service described the current MP(S)P label as "extraordinarily burdensome," *Food Chemical News*, June 16, 1980, page 39.

In a recent interview, former Assistant Secretary Carol Tucker Foreman discussed the mechanical deboning impasse:

* * * There has never been an issue that was such a loser on all sides. When I approved the use of mechanically processed meat at all, * * * I got attacked vociferoulsy * * * about how the consumer lady sells out. * * * No one was willing to market it. In part, that was a failure of the competitive system because I think it would have sold. They could have sold it. But I was prepared to go ahead with a regulation that removed the powdered bone statement and substituted some nutrition labeling indicating the

presence of calcium. That would have been a good public policy decision * * * *Food Chemical News*, January 19, 1981, pp. 55–56.

It is apparent from these comments by former USDA officials who participated in the adoption of the MP(S)P regulation that there is a need to amend the current regulation.

(B) *Changes proposed in this petition are supported by research into consumer preferences and perceptions.*

In response to the Department's request for information regarding consumer preferences and perceptions, Pacific Coast Meat Association commissioned a series of consumers focus groups with Market Research Services, 410 North Michigan Avenue, Chicago, Illinois 60611. Focus group research was selected to obtain qualitative evaluation of the existing MP(S)P label and alternatives. The choice of this type of research was strongly influenced by the Department's use of a focus group format to study grading standards in 1979–1980.

A total of eight focus group sessions were conducted—two each in Chicago, Los Angeles, Atlanta, and Washington, D.C. The eight sessions were designed to test overall reaction to MP(S)P and MDM labels, including the various reactions of working and non-working women, younger and older consumers, and various ethnic groups including Hispanics and Blacks.

During the focus group sessions, the participants were shown labels complying with the present MP(S)P regulations and asked to discuss and explain the meaning and significance of the qualifying phrases, "Mechanically Processed Beef Product" and "Contains Less Than 0.6% Powdered Bone." The uniform reaction of the focus group participants was that these qualifying phrases were uninformative, confusing, and derogatory. The focus group participants were also shown alternative labels and asked for their reaction.

The conclusions of Market Research Services were as follows:

(1) The term *mechanically processed beef product* is confusing to consumers, and it fails to adequately inform them as to what the product MPBP actually is.

(2) Most consumers reacted negatively to the emphasis of *powdered bone* (even in very small amounts) on a product label.

(3) It appears that consumers probably will not purchase products containing MPBP if labeled according to the 1978 USDA regulation.

(4) *Mechanically deboned (beef)* appears to be a more favorable and informative term than *mechanically processed (beef) product.*

(5) Once they know that MPBP actually is beef that has been mechanically deboned, most consumers believe it is unnecessary to emphasize the mechanical deboning process if, in fact, the product is safe and nutritious.

Consumers do feel strongly, however, about listing all the product ingredients in the ingredient statement.

Consumer Focus Groups Concerning Mechanically Processed Meat Product, September, 1980, p. 12.

The conclusions of the Market Research Services study must be read together with the quantitative research data prepared for the Gerber Company, and previously submitted to the Department. The Gerber data confirms that consumers have a negative reaction to the format and content of the existing MP(S)P label. These materials should satisfy the Department's requests for "compelling evidence" regarding:

(1) The effects of the present regulation and your proposed regulation on consumer preference.

* * * * * *

(4) The question of whether the proposed labeling would be false or misleading in any particular to consumers or other purchasers of the product.

(C) *Changes proposed in this petition are supported by economic research.*

In response to the Department's request for additional information regarding the "economic effects of widespread use of mechanically processed meat," the American Meat Institute has supported a study entitled "Economic Impacts of Regulations on Mechanically Deboned Red Meats." This study was conducted by J. Bruce Bullock and Clement E. Ward, Associate Professors, Department of Agricultural Economics, Oklahoma State University.

The Bullock and Ward study measures the economic impact of the existing MP(S)P regulation, together with the economic effect of (1) removing the existing requirement for prominent qualifying phrases on the label, and (2) removing the present fat and protein limitations. Professors Bullock and Ward conclude that to minimize the substantial social costs of the present MP(S)P regulation, it is essential to eliminate the labeling, fat, and protein restrictions from the present regulation. They calculate that such a revision would have benefits to society totalling $513 million per year.

The following excerpts summarize the conclusions of Bullock and Ward:

Current MDM regulations generate social costs in the neighborhood of $513 million per year. Benefits generated by the regulations are limited to a small segment of the population who must restrict their intake of calcium. An alternative regulation requiring the product label to contain information about the calcium content would generate the same benefits as the current regulations without generating social costs associated with those regulations.

The foregoing analysis indicates that the following changes in MDM regulations would be in the public interest.

1. Revise product labeling requirements so that labels do not impede sales of MDM. The revised label probably should include information about the calcium content of the final product for calcium sensitive consumers. This modified labeling regulation would generate the same social benefits but avoid the social costs of the current regulations.

2. Removal of the current regulations regarding fat, protein, and calcium content of MDM. Existing regulations insure that meat products such as franks and wieners will not exceed specified fat levels. Establishing upper limits on the fat content of MDM provides the consumer with no more protection than existing regulations. Therefore, current regulations prevent processors from making efficient use of existing resources. The fat restriction will prevent a large portion of the potential raw material from being used in MDM production. The above analysis indicates that modification of the product labeling regulations without also removing the fat restrictions would remove less than 30 percent of the social costs associated with the current regulations.

3. The current regulation limiting the content of MDM in final products to no more than 20 percent of the meat ingredients does not appear to be generating social costs at the present time. However, there is no economic justification for this type of regulation. The success of a processed meat product in the marketplace depends on repeat purchases of satisfied customers. The rigors of the marketplace will weed out products that contain too much MDM to satisfy consumers. While this regulation is not generating social costs at the present time, it might do so in the future. Continuation of the 20 percent limit on MDM content would preclude development of potential new products that might be quite acceptable to consumers. Hence, the public interest would be served by removing this regulation.

Bullock and Ward, pp. 48–49.

The work of Bullock and Ward confirms the very substantial benefits to society which can be achieved by modifying the existing regulation.

The Bullock and Ward report is the lastest in a series of studies regarding the economic impact of the MP(S)P regulation. An earlier study conducted by Willard F. Williams and D. W. McNiel,[1] together with a USDA critique

[1] Williams, Willard F. "Economic Evaluation of Potentials Through Mechanical Deboning of Red Meats", TARA, Inc., Lubbock, Texas, April, 1979;

Continued

of that study are reviewed by Bullock and Ward. While the methodology of the three studies differ, as do the conclusions of each study regarding the aggregate dollar value of benefits which will result from a modified regulation, each study concludes that there will be *substantial benefits* from modification of the existing regulation.

The Department has also requested information regarding "industry's capability of producing and utilizing [Mechanically Deboned Meat]." This subject is addressed by Bullock and Ward and is addressed in previous submissions of Pacific Coast. Obviously the full economic benefits of mechanical deboning cannot be realized until existing equipment is reactivated and until additional equipment is ordered, assembled, and installed. Bullock and Ward suggest that the full benefits of revisions of the mechanical deboning regulations can occur within a period of two years.

(D) *"Mechanically Deboned Meat" is a more informative and understandable term than "Mechanically Processed (Species) Product".*

Focus group participants responded in an informed way to the name Mechanically Deboned Meat (the common or usual ingredient name long used in the United States). These same participants were totally confused by the prominent qualifying phrase "Mechanically Processed Beef Product." In each of the focus groups, consumers found the word "processed" to be meaningless, asking again and again "Isn't all food processed?" The word "product" was similarly confusing, causing focus group participants to ask whether the mechanically processed ingredient was meat, or whether it was something artifical or made from chemicals. When participants were asked about the meaning of the term Mechanically Deboned Meat, these participants were immediately and finally able to understand that this means meat separated from bone by a mechanical means.

(E) *The ingredient name, Mechanically Deboned Meat should be listed only in the ingredient statement, not in a prominent qualifying phrase.*

Focus group participants were confused by the prominence given the qualifying phrase "Mechanically Processed (Species) Product." Participants expressed concern that the prominence of the phrase indicated a problem with the product. In short, the prominence of the qualifier aroused unwarranted apprehensions and without conveying information.

After focus group participants had learned that mechanically processed beef product was actually beef that had been mechanically deboned, most believed it was unnecessary to emphasize the mechanical deboning process, so long as the ingredient is safe and nutritious. Consumers did feel that all product ingredients should be indentified in the ingredient statement.

Mechanically Deboned Meat is skeletal meat. To the extent that there are small and safe quantities of powdered bone, these do not decharacterize the ingredient's fundamental nature as "meat." Therefore Mechanically Deboned Meat is an ingredient properly identified in the ingredient statement and requires no prominent qualifying phrase.

(F) *A declaration of calcium content, where it is nutritionally significant, should appear in the ingredient listing or, at the processor's option, as part of a nutrition label.*

Focus group participants found the label declaration of powdered bone derogatory and misleading. Many participants mistakenly thought this declaration referred to a separately added powdered bone ingredient. Others mistakenly thought that there would be hard pieces of bone either detectable to the tongue or hazardous to swallow. USDA's Select Panel concluded that MDM contains no pieces of hard bone, and that the powdered bone is non-detectable to the tongue. The focus group participants did not relate the derogatory term "powdered bone" to the presence of calcium, a nutrient.

The present powdered bone disclosure was required to provide information about calcium. Most consumers need more calcium while some should restrict their intake. USDA's 1977 Household Consumption Study shows that intakes of calcium for adults and for children aged three to five, are on the average 11%–20% *below* the government's recommended daily allowances (RDA). Consumers concerned about calcium will be best served by express information about calcium content presented, either in the ingredient statement, or where a nutrition label is used, in that nutrition label. However, such information should only be required where the amount of calcium is nutritionally significant.

(G) *Calcium content of the meat portion of the finished product should be limited to ¼%.*

The existing regulation limits the amount of MP(S)P in any meat food product to 20% of the meat portion. As Bullock and Ward point out, this restriction discourages innovation. An overall ¼% calcium limitation for the meat portion of finished products will be technology-forcing feature, providing an incentive to lower the powdered bone contained in the Mechanically Deboned Meat.

(H) *Deletion of the existing fat and protein limits.*

Deletion of the existing fat and protein limits is supported by the conclusions of Bullock and Ward, which show these constraints are at least as limiting as the onerous and derogatory labeling presently required. Mechanically Deboned Meat is an ingredient used in other products. If fat and protein limits are appropriate, such limits should be imposed only on finished products.

(I) Other publications support this petition.

Various other scientific papers have been published which refer to the ingredient consistently as "Mechanically Deboned Meat" and support its equal treatment with hand deboned meat. They are:

Emswiler, B. S., Pierson, C. J., Kotula, A. W. and Cross, H. R. Microbiological Evaluation of Ground Beef Containing Mechanically Deboned Beef. 1978 J. Food Sci. Vol. 43–158

Cross, H. R., and Kotula, A. W. Stability of Frozen Ground Beef Containing Mechanically Deboned Beef. 1978 J. Food Sci. Vol. 43–281

Cross, H. R., Carpenter, Z. L., Kotula, A. W., Nolan, Thomas W. and Smith, G. C. Use of Mechanically Deboned Meat in Ground Beef Patties. 1977 J. Food Sci. Vol. 42–1496

III. Environmental Impact

The environmental impact of the proposed regulatory change would be extraordinarily positive. The proposal would make available for consumption hundreds of millions of pounds of additional meat with no added burden on agricultural production by farmers and livestock feeders. This ingredient would contain supplemental calcium, a needed nutrient. The recommended changes cause a huge conservation of valuable food resources.

IV. Summary and Conclusion

The production of Machanically Deboned Meat is being stifled by existing regulation. This result has an inflationary impact on meat prices and is costing the citizens of the United States more than $500 million per year. These effects can be remedied by the modifications proposed in this petition. The current MP(S)P regulations provide no health or economic benefits which

and McNiel, D. W. "Economic Welfare and Food Safety Regulations: The Case of Mechanically Deboned Meat", *American Journal of Agricultural Economics*, Vol. 62, No. 1, February, 1980, pp. 1–9.

would not be carried forward in the revisions proposed in this petition. Because it is in the national interest to maximize food resources and to moderate rising food prices, the petitioners hereby request that the Department propose in the Federal Register the changes recommended in this petition.

Respectfully submitted,

Pacific Coast Meat Association.

Rosemary M. Mucklow,

Excutive Director.

American Meat Institute.

C. Manly Molpus,

President.

Consumer Focus Groups Concerning Mechanically Processed Meat Product

Prepared for Pacific Coast Meat Association

September 1980.

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PREFACE

Background and Purpose

Mechanically deboned red meat is presently being produced in very small quantities in the United States, and is virtually unavailable to consumers. Owners of deboning equipment for red meat purchased prior to 1978 are reluctant to produce mechanically deboned meat because they think their customers are unwilling to risk offering consumers products labeled according to the July 20, 1978 USDA regulation:

"Mechanically processed beef product," "mechanically processed pork product," and "mechanically processed lamb product" * * * These terms shall appear in type at least one-half as large as the product's name. The percentage of powdered bone contained in the product must also be stated on the labels, in letters at least one-quarter the size of the product's name. 9 CFR 317.2(j)(13)

The product, renamed "mechanically processed (species) product"

May constitute up to 20% of the meat portion of any meat food product (with certain products excepted) 9 CFR 319.6(b). "The product * * * shall not have a calcium content exceeding 0.75%." 9 CFR 319.5(a)

Therefore, the finished product containing mechanically processed (species) product shall not have a calcium content exceeding $(.20 \times .75) = 0.15\%$. USDA applies a multiplier of 4 to calculate bone on a dry basis, therefore, $(0.15 \times 4) = .60\%$ maximum "powdered bone" allowed in the finished product.

The members of the Pacific Coast Meat Association feel that the 1978 USDA regulation is unfair, both to the meat packers and to consumers. Therefore, qualitative market research study was undertaken to learn consumers' reaction to the regulation: what the label means to them, how they feel about it, and how they feel about the product.

Research Objectives

The primary objectives of this research were to answer the following questions pertaining to consumers' use of and attitudes toward processed meat products, and their reactions to the USDA labeling requirements:

How are processed meats used by consumers?

What types of processed meats are used?

How aware are consumers of the ingredients in processed meats?

Do they read labels?

Do they perceive processed meats as being nutritional?

How do consumers feel about the ingredients in processed meats?

To what extent are processed poultry products used?

What do consumers like about them?

Why are they used?

What are the reactions of consumers to labels for products containing mechanically deboned red meat? (meeting USDA requirements)

What does the label tell them about the product(s)?

Would they purchase the product(s)?

What do the words on the label mean?

Do consumers consider the product(s) safe and nutritious?

What is powdered bone, and what are consumers' reactions to having this ingredient listed/included?

Do they perceive powdered bone as being calcium?

How do consumers feel about USDA labeling regulations?

Do ingredients have to be listed on the front of the package?

How do consumers react to the letter sizes and specifications?

If an ingredient can be no more than 20% of the total product, does it need to be listed on the front of the package?

What are consumers' reactions to other possible names for MPMP?

Mechanically Processed Meat

Mechanically Separated Meat

Mechanically Deboned Meat

What are consumers' reactions to waste of red meat?

If prices were reduced due to less waste, would they consider buying products containing mechanically deboned red meat and poultry in general?

The answers to these and other related questions are summarized in the following report.

Research Methodology

The focus group interviewing technique was used for this research

project. This research technique allows for an unstructured discussion between the moderator and the respondents as well as among the respondents themselves. It also allows viewers to see and hear the groups (unobserved) as the sessions are in progress.

Eight group sessions (encompassing a total of 69 respondents) were completed with women ages 25 to 54. Four sessions were completed with full-time working women, and four sessions were completed with non-working and part-time working women. These eight sessions were conducted in four markets as follows:

Chicago, Ill. (November 1979)

Group 1—Non-working Women Ages 30–39
Group 2—Full-time Working Women Ages 35–44

Los Angeles, Calif. (May 1980)

Group 3—Non-working/Part-time Working Women Ages 30–44
Group 4—Full-time Working Women Ages 25–34

Atlanta, Ga. (June 1980)

Group 5—Non-working/Part-time Working Women Ages 40–54
Group 6—Full-time Working Women Ages 30–39

Washington, D.C. (June 1980)

Group 7—Non-working/Part-time Working Women Ages 25–34
Group 8—Full-time Working Women Ages 35–54

Spanish-American respondents were represented in Groups 2 and 3, and Black respondents were represented in Groups 6, 7 and 8. All respondents were from middle-income households ($15,000 to $30,000) and represented both white collar and blue collar workers. No one in the household was employed in a sensitive occupation such as market research or advertising, or in the meat industry.

Each session lasted 1½ to 2 hours and was both audio-taped and video-taped for future reference.

Following a brief discussion of usage of processed meat products, the respondents were shown a series of labels for processed meat product. (See Appendix, Exhibits 1–9)

Focus Group Technique—Statement of Limitations

In the focus group interview, a trained moderator leads a discussion of a given subject among a group of recruited panelists. The nature of the interview is open-ended and discursive, encouraging candor and free expression from all the participants and interaction among the panelists. The technique permits subjects to be explored fully and in whatever depth is considered meaningful in accord with the research objectives.

The focus groups interview seeks to develop insight and direction rather than quantify precise or accurate measures. Accordingly, it should be clearly understood that this research is exploratory in nature. The findings themselves must be seen as hypotheses; therefore, if more precise quantification is required, a large sample survey is recommended. The findings derived from group research are not intended to be projectable to any larger population. They are developed for the purpose of qualitative insight, and should be reviewed as such.

Executive Summary

Usage of Processed Meats

The sixty-nine participants in the focus groups all used many types of processed meat products in their households on a frequent basis. These products are used for all types of meals; consumers like to use them because of their convenience, availability, and taste.

About half the respondents had tried poultry frankfurters and were continuing to use them. Approximately ¼ to ⅓ of the women indicated that they usually read product ingredient information when shopping.

Reactions to the USDA MPBP Label (Exhibit 1)

When first looking at the label, all respondents immediately noticed the words *mechanically processed beef product* and the words *contains powdered bone.* They expressed confusion regarding the labeling, and most reacted negatively to the hot dog product as a result of reading this label.

These consumers were especially confused by the words *mechanically processed beef product.* Most admitted they did not know what the phrase means but guessed the meaning to the *machine made, artificial,* or *made of beef by-products. Mechanically processed beef product* appears to be a confusing and sometimes misleading phrase that causes consumers to question the product. The phrase causes consumers to believe the product is something other than it actually is, rather than explaining what the product is.

The powdered bone statement was extremely unappealing to most of the study participants; many indicated that because of the powdered bone statement alone, the product was so unappealing they would not even consider purchasing it. Many initially were confused about the amount of powdered bone contained in the product, and some were unable to associate bone with calcium.

Many consumers believed that the hot dogs labeled with *MPBP* probably would be as nutritious as any other hot dogs and would be safe to eat. Some, however, felt that there might be something about the ingredients they should know more about; because they believed the large letters to be some kind of warning.

Almost three-fourths (72%) of the participants indicated that they probably would not purchase the hot dog product labeled with *MPBP* and *powdered bone.* (Exhibit 1) The prime reasons for negative purchase intent were that they did not know what *mechanically processed beef product* is; they reacted negatively to powdered bone; they were unsure of the safety of the product; they believed *MPBP* to be comprised of inferior meat; they were afraid of chemicals in the product.

Reactions to the USDA MPBP Labeling Restrictions

The majority of the participants felt that if there was, in fact, nothing wrong with the product (MPBP), then it was unnecessary to emphasize it and adequate to list it only in the ingredient statement.

Because of the very small quantity of powdered bone in the product, these consumers questioned emphasizing it on the front of the label. Some felt powdered bone should be listed as an ingredient, while others did not want to see it on the label at all.

Alternative Names

When presented with alternative names for MPBP, most of these consumers felt the words *mechanically deboned beef* offered the best explanation of the product. They felt *deboned* explained the process and told that the product was beef which had been removed from the bone by a mechanical (machine) method.

Attitudes Toward MPBP After Learning What It Is

Following a lengthy discussion regarding the various labels and *mechanically processed beef product* lasting over an hour in each session, many of the study participants were still confused as to what MPBP actually was. Finally, after the moderator explained to the respondents the process by which *mechanically processed beef product* is prepared; most of these consumers were more favorably disposed toward the product than they had been before, and many indicated they would purchase

products containing MPBP. Overall, they agreed that the statement *mechanically processed beef product* was both confusing and ambiguous. Most did not agree with the USDA's labeling for MPBP; they felt it was adequate to list the information in the ingredient statement only.

Conclusions

1. The term *mechanically processed beef product* is confusing to consumers, and it fails to adequately inform them as to what the product MPBP actually is.

2. Most consumers reacted negatively to the emphasis of *powdered bone* (even in very small amounts) on a product label.

3. It appears that consumers probably will not purchase products containing MPBP if labeled according to the 1978 USDA regulation.

4. *Mechanically deboned (beef)* appears to be a more favorable and informative term than *mechanically processed (beef) product.*

5. Once they know that MPBP actually is beef that has been mechanically deboned, most consumers believe it is unnecessary to emphasize the mechanical deboning process if, in fact, the product is safe and nutritious.

Consumers do feel strongly, however, about listing all the product ingredients in the ingredient statement.

Detailed Findings

Usage of Processed Meat Products

All of the study participants used processed meat products in their households on a frequent basis. Almost all these consumers were medium to heavy users of hot dogs, and used other packaged meats such as lunchmeat, sausage, and bacon. These women also used canned foods containing processed meats: Spam, shredded beef, beef stew, sloppy Joes, corned beef hash, chili, spaghetti sauce, spaghetti with meatballs, ravioli, canned chicken, meat spreads.Vienna sausages, etc. Frozen foods containing processed meats were popular also, such as pizza, tamales, patties, and other entrees.

The uses of products containing processed meats seem limitless; they are used for all types of meals (breakfast, lunch, dinner) as well as for snacks and hors d'oeuvres. They are heated, fried, used with other foods, and eaten right out of the package. They are used because they are quick, easy, and always available. They are convenient to use since they can be kept on hand and are ready to serve in a relatively short period of time. The study participants felt processed meats were nutritious and healthful, and they liked the way these foods taste.

Use of Poultry Hot Dogs and Lunchmeat

Overall, about half of the participants in these eight focus groups had used and were continuing to use chicken franks. These consumers liked chicken franks because they are lower in cost, have fewer calories, have less fat (lower cholesterol), and taste good. A few had also tried ham and turkey/chicken bologna.

"I can't tell the difference."
"I feel that they're better for you."
"My children prefer them."

Reactions to the USDA MPBP (Hot Dog) Label (Exhibit 1)

In each session, consumers were shown Exhibit 1 and their initial reactions were obtained. In order to avoid influence by other respondents, they were asked to write down their first impressions of the label before discussions began.

Upon first looking at the label, all respondents immediately noticed the words *mechanically processed beef product* and the words *contains powdered bone.* Overall, their initial reaction was confusion, and their first comments questioned the wording of the label.

"I have no idea what it meant but it turned me off immediately."
"I've never seen *mechanically processed.*"
"*Mechanically processed* turns me off."
"What do you mean by that *powdered bone?*"
"What does *mechanically processed beef product mean?*"
"My question was—what does *mechanically* mean?"
"Why do they have to put it (*powdered bone*) in such large print like that?"
"Half of the product is powdered bone."
"*Powdered bone* really caught my eye!"

What the Label Tells About the Product

These participants felt that the information presented on the label was very confusing and lacked specifics. There were varied reactions about the information on the label ranging from complete confusion to extreme negativism, with some neutrality.

Most of the respondents felt the label was extremely confusing as well as lacking in information. They wanted to know what the label meant and felt that they needed more information.

"It doesn't tell me much about the product."
"There must be something in there we don't know about."
"It makes me wonder what's in it."
"It's a disguised kind of phrase (MPBP) * * * one of those nothing phrases that could mean anything."

Not only were these participants confused by the label, but they had extremely negative reactions to the product as a result of reading the label. Most of them, as a result of reading the label, felt these hot dogs would be inferior to the hot dogs presently on the market.

"A lot of bone and a little meat."
"Has a lot of chemicals."
"I think it would really scare a lot of people away from buying it."
"It looks like an inferior product when they put the word *mechanically* at the top like that."
"It gives the connotation that it's less quality than I would want."
"Telling you it's not pure meat."
"I think it doesn't have as good quality as another hot dog and because of this they're emphasizing the fact of how it's made.
"It reminds me of dog food; dog food has processed beef products with bone meal."
"Makes you aware—use it at your own risk."

Some respondents felt that the label told them the hot dogs were made by machine * * * not by hand. They did not have an extremely negative reaction to the label but questioned the reasoning behind it.

"Only means the machine put the whole thing together, but I don't like it."
"All put in one big machine and made."
"Maybe a machine takes the excess meat from the bone."
"I just think it's a different process than what's been done."
"To me, it means put together by machine."

What Mechanically Processed Beef Product Means

The study participants were especially confused by the words *mechanically processed beef product.* Most admitted that they did not know what it meant by guessed it to be artificial, machine made and made of beef parts and left-overs from the animal.

"Those words are just so vague."

The words *mechanically processed* were confusing since most felt all hot dogs are made by some type of a mechanical process already. They believed that hot dogs are machine made and made of processed meat—meat that has been cooked, smoked, canned, etc.

"Processed means how it's cooked."
"I don't know if the beef is altered or untouched by human hands."
"I was trying to find a positive reason for them putting it on there; maybe cleaner, more sanitary."
"I don't know other than some kind of machinery is used."
"I don't think they make hot dogs by hand."
"I could mean *very sterile.*"

"Everything in a can is processed."
"Processed cheese is not like cheese; the word sounds synthetic."

The words *beef product* led these consumers to believe that beef parts such as lips, ears, eyeballs, brains, hooves, udders, intestines, etc. were used to make the hot dogs. The word *product* appears to be very deceiving in the phrase since people see this as inferior meat or beef by-products.

"They added scraps from potted meat."
"Instead of freshly ground meat like I thought, maybe some canned or processed meat is added."
"Those beef products could be beef substitutes."
"What parts of the beef were included? It could be the hooves, the tail * * * the ears * * * the tongue * * * "
"You use your own judgment on what products they use."
"I want to know what those products are."
"*Beef product* would make me think of gristle."
"If they just said beef instead of *beef product* * * * *product* makes it sound like it is not even beef."
"A small amount of beef and a whole lot of other ingredients."
"*Beef product* could be anything from the cow."

Some respondents felt that *mechanically processed beef product* was artificial or not real beef at all. They believed the product to be made of soy beans or other non-beef materials.

"I assume if it were beef it would say *beef* and not *beef product.*"
"It contains a lot of other things other than beef and you won't be getting the nutrition that you want."
"It could be fake beef."
"Could it be a beef flavored soy product?"
"Why doesn't it say *real beef?*"
"*Mechanically processed* sounds like it's not really food."
"Artificial beef flavor."
"Not real—a lot of junk."
"It seems like it would have a lot of artificial things in it."
"Something pretending to be real beef."
"It sounds very artificial to me."
"It bothers me that the government allows non-food items in food."

Other comments regarding MPBP had to do with a machine mixing process.

"The machine takes all the meat off the carcass . . . and throws everything else in."
"Mix beef with something else."
"They use two kinds of meat."
"Ground-up and left-over products and mostly fat and bone."
"I just think it's a bunch of left-overs that a big machine squishes it as squishy as it can and then it's all just lumped up."
"It would be the stuff that's left over and they would grind it up."

Mechanically processed beef product appears to be a confusing and sometimes misleading phrase tht causes consumers to question the product. Rather than explaining what the product actually is, the phrase causes consumers to believe the product is something other than what it actually is. After their initial exposure to the USDA label, the majority of the consumers who participated in this study did not know what *mechanically processed beef product means.*

"Why are they putting so much on how they did it? I mean I don't know whether it's good or bad—I really don't understand it."
"Because none of us understands what it means."
"They're confusing people."
"I honestly don't know what it means."
"If it wasn't misleading, somebody here would know what it (MPBP) is."
"I think it's confusing because the public doesn't know what it is."
"It seems to be misleading because it's written so big."

Reaction to 0.51% Powdered Bone

Most of the study participants had a very negative reaction to the powdered bone statement. A large-lettered statement that the product contains powdered bone in any amount was extremely unappealing to these consumers. Many indicated that because of the powdered bone statement alone, the product was so unappealing that they would not even consider purchasing it.

"*Powdered bone* bothers me."
"What will it do to me?"
"I don't want to eat bone."
"I just don't like the idea."
"I don't know what powdered bone is * * * I wouldn't buy that."
"*Powdered bone* sounds awful."
"*Powdered bone* turns me off completely."
"I wouldn't buy it because of the powdered bone."
"It seems like it would be crunchy."

When first observing the label, many respondents were confused by the amount of powdered bone in the product. Some of them misread the 0.51% as 51%, or half of the product, because of the size of the numbers on the label.

"I think it's a turn-off * * * they wouldn't look at the amount."
"when I first looked at it, I though it had 50% bone."

A few respondents, however, felt that powdered bone might be a positive addition to the product. They felt that bone is nutritious; some interpreted it to be bone meal rather than powdered bone.

"Is it natural bone meal?"
"When I saw powdered bone, I thought of powdered bone meal."

After discussing the product label for some time, about half the consumers guessed the powdered bone to be associated with the mechanically processed meat product. Some believed that a certain amount of bone might get into the meat as a result of a mechanized process to debone the meat.

"Maybe it's so well processed, it powders the bone."

The other consumers, however, were unable to guess where the bone came from, and most of these respondents felt that the bone was added to the product for some reason.

"It's something added."
"The average consumer would read that and wonder why ther're putting powdered bone in there."
"It's a filler—they added it."
"Maybe they collected bones from other things and added it."

When looking at the nutritional labeling, many of the respondents still were unable to associate the powdered bone with calcium. Some women could not readily associate calcium with powdered bone, and others were so "turned off" by the powdered bone statement that they were unable to see that its benefit was calcium.

Identification of Ingredients

All these consumers were knowledgeable as to how the ingredients were listed on the label; there was no question regarding which ingredient was present in the greatest amount. These respondents identified *beef* as being the most prominent ingredient and *mechanically processed beef product* as the second most prominent ingredient.

Many wondered what the difference was between *beef* and *mechanically processed beef product.* They asked why beef was listed twice on the ingredient statement if, in fact, *mechanically processed beef product* was real beef. They questioned listing a processing technique as an ingredient.

"If it's a technique, why list it in the ingredients?"
"I'd like to know the difference between *beef* and *mechanically processed beef product.*"

Opinions Regarding the Product's Safety and Nutrition

The majority of the participants felt the hot dogs labeled with MPBP probably would be as nutritious as any other hot dogs on the market and would be safe to eat because they were "U.S. inspected and passed by the Department of Agriculture."

However, because of the labeling of the product, some participants felt that there might be something about the ingredients that they should know more

about. Many believed that the large letters were a warning * * * telling them to be alert to a possible problem/danger.

"I want to know what the government found out about this that's causing them to make such a big deal out of it."

"It may be a bad product and they have to show it."

"It's must like a pack of cigarettes; they put this on the label to tell you."

"That could almost tell you there's something not too good about that."

"I think it's a warning."

"Is there something wrong with this product?"

"This must be worse than nitrate." (Why?)

"Because nitrate is in smaller sized letters."

Purchase Intent

When asked if they would purchase the hot dogs (Exhibit 1), 50 respondents (72%) indicated that they would not buy the product, and 19 respondents (28%) said that they probably would buy it.

Seventy-two percent (72%) would not purchase these hot dogs because they did not know what *mechanically processed beef product* was; they had a negative reaction to the *powdered bone;* they were unsure of the safety of the product; they felt the product was made up of beef parts or inferior meat; or they were afraid of the chemicals in the product.

"I don't think I would buy it because of the powdered bone, and that *mechanically processed beef product* would give me something to think about."

The 28% who would purchase the product said they would because it was USDA approved; it was a beef frankfurter; and because they expected it to be lower in cost.

Many respondents commented that if they saw another brand of hot dogs not labeled with *MPBP* and *powdered bone* in large letters, they probably would buy this unlabeled brand. If given a choice, they would purchase hot dogs without the MPBP and powdered bone statements on the label.

"If I had a choice to buy one without bone, I would."

"Why would you choose this when you could choose another one that didn't have that written on it?"

Reactions to Other MPBP Labels

Label Without Restrictions (Exhibit 3)

After discussing Exhibit 1, the participants were shown another label for hot dogs listing *mechanically processed meat product* in the ingredient statement only, with no mention of powdered bone.

Many of the respondents were much more favorably inclined towards this label. Some felt that it was adequate to list the MPBP in the ingredient statement only; others indicated that they probably would not even notice it.

"That one looks better.".

"It doesn't emphasize *mechanically processed beef product* on the label."

"It's not trying to boost something."

"It's more appealing."

Chili Label (Exhibit 4)

When the respondents first looked at the chili label, they again immediately noticed the MPBP and powdered bone statements. They felt the product contained a fairly large amount of mechanically processed beef product rather than just a little. They also began to wonder what was wrong with MPBP that would require its being labeled in such large letters.

"They want to be sure you know it's in there."

"They're making a big thing of it."

"I'd think twice seeing that on the front."

"It draws attention to that." (MPBP)

"It would be depressing."

Consumers' Reactions to the USDA Labeling Restrictions for MPBP

Many of the study participants believed that they already were eating meat products which contained mechanically processed beef product and powdered bone, and they now reacted to the government's telling them about the ingredients and/or processes. Other respondents believed mechanically processed beef product to be something new that never had been used before.

"Is it something new, or has it already been on the market?"

"I think we've been eating it all along but haven't been told."

There was general agreement among these consumers that all the ingredients in a food product should be listed on the label. They want to know what they are eating and what their food is made of. However, because the words *mechanically processed beef product* were so confusing to these women, there were mixed reactions to the USDA regulations.

The consensus among most of the study participants was that there must be something wrong with MPBP if the government requires manufacturers to label it in large letters.

"If they're putting it on there and it has to be a certain percentage, then there's got to be something wrong with it."

"What bothers me is that I can't understand what it means."

"Why is it put on the label twice?"

MPBP Emphasized in Large Letters vs. Ingredient Statement

When asked if it was necessary to emphasized MPBP on the label in large letters, the majority of respondents felt that if there was, in fact, nothing wrong with the product (MPBP), then it was unnecessary to emphasize it and adequate to list it only in the ingredient statement. However, they believed that if MPBP is not safe and nutritious, or if it denotes an inferior product, *MPBP* should be emphasized on the package.

"They put too much emphasis on *mechanically processed beef product;* if it were in the lower corner, it wouldn't bother me."

"It makes you wonder."

"But if it's necessary to stay away from it (MPBP), then it's (large lettering) good."

"They're hitting you in the eye with something negative."

"I would expect it in the ingredient statement."

"If you think you're getting beef when, in fact, you're getting lips and ears, then it should be up front."

"If it's nutritionally sound, why do they have to put it up there * * * why not just put it in the ingredients?"

"It (the label) has too much on it."

"If *mechanically produced* were not on the front as big and bold as it is right there and just kind of humbly listed there on the other side, I would think of it matter-of-factly * * * made mechanically."

The Emphasis of Powdered Bone

Because of the very small quantity of powdered bone in the product (less than one-half of a percent), these consumers questioned emphasizing this small amount on the front of the label. The powdered bone statement caused such extreme negative reactions that most did not want to see it on the label at all. Others, however, felt it should be listed in the ingredient statement and not emphasized in large letters.

"Why isn't powdered bone in the ingredient statement?"

"I think it's unnecessary to put bone on front."

"Why didn't they put that bone in the ingredients? I'd rather see it in the ingredients than in big letters."

"Why do they have to label such a small amount?"

These respondents were not aware that some individuals cannot have calcium in their diets. After being so informed, they indicated their feeling that individuals who cannot have calcium would always read the ingredient statement on any label; therefore, this information should be available in the ingredients, but not emphasized on the front of the package. They pointed out that many people are

unable to eat salt or sugar and these items are listed only in the ingredient statement.

"Will people know that bone is calcium?"

"People who can't eat certain things look at ingredients."

"People with dietary problems know not to eat processed meats."

"Larger numbers of people have to watch for salt and sugar than have to watch for calcium, and they are not prominently labeled."

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EXHIBIT 14d
PROCESSED MEATS FOCUS GROUPS
SCREENING QUESTIONNAIRE

WASHINGTON D.C.

1. Are you the female head of your household?

☐ YES ☐ NO ----> TERMINATE

2. Do you do most of the grocery shopping for your household?

☐ YES ☐ NO ----> TERMINATE

3. What is your age? Are you ..... (READ)

TERMINATE <------ ☐ UNDER 20
☐ 20 - 24
GROUP I <---- ☐ 25 - 29
☐ 30 - 34
☐ 35 - 39
GROUP II <---- ☐ 40 - 44
☐ 45 - 49
TERMINATE <------ ☐ 50

4. In the past month, have you purchased any of the following food items? (READ)

	YES	NO
LUNCHMEAT	☐	☐
HOT DOGS	☐	☐
CANNED MEATS	☐	☐

IF "NO" TO ANY OF THESE ITEMS, TERMINATE

4a. (FOR EACH ITEM, ASK:) How often do you use _____ in your household?

	LUNCHMEAT	HOT DOGS	CANNED MEATS
4 TIMES A WEEK OR MORE OFTEN	☐	☐	☐
2 - 3 TIMES A WEEK	☐	☐	☐
ONCE A WEEK	☐	☐	☐
EVERY OTHER WEEK	☐	☐	☐
ONCE A MONTH	☐	☐	☐
LESS THAN ONCE A MONTH	☐	☐	☐

RESPONDENT MUST USE AT LEAST TWO OF THESE ITEMS ONCE A WEEK OR MORE OFTEN

5. Are you, or is any member of your household, employed in market research, advertising, or for the meat industry?

☐ NO ☐ YES ----> TERMINATE

6. Is your total annual family income under or over $15,000?

TERMINATE ← ☐ UNDER $15,000
☐ OVER $15,000

6a. Is it under or over $30,000?

☐ UNDER $30,000
TERMINATE ← ☐ OVER $30,000

7. What is the occupation of the head of your household?

_____

8. When was the last time you participated in a market research project of any type?

TERMINATE <----- ☐ WITHIN THE PAST 6 MONTHS
☐ OVER 6 MONTHS AGO
☐ NEVER

9. Are you employed outside your home?

GROUP I ← ☐ NOT EMPLOYED
☐ EMPLOYED PART TIME
GROUP II ← ☐ EMPLOYED FULL TIME

10. TYPE OF RESPONDENT:

PLEASE RECRUIT 3-4 BLACK RESPONDENTS FOR EACH GROUP

☐ WHITE
☐ BLACK
☐ SPANISH AMERICAN
☐ OTHER: _____

11. Are you now, or have you ever been, a member of the Virginia Citizens Consumer Counsel?

☐ YES ----> TERMINATE ☐ NO

NAME _____ PHONE _____

ADDRESS _____

CITY/STATE _____ ZIP _____

RECRUITED BY: _____ DATE: _____

CONFIRMED BY: _____ DATE: _____

MJB RESEARCH
#G012

EXHIBIT 14c
PROCESSED MEATS FOCUS GROUPS
SCREENING QUESTIONNAIRE

ATLANTA, GEORGIA

1. Are you the female head of your household?

☐ YES ☐ NO ----> TERMINATE

2. Do you do most of the grocery shopping for your household?

☐ YES ☐ NO ----> TERMINATE

3. What is your age? Are you ..... (READ)

☐ UNDER 20
☐ 20 - 24
☐ 25 - 29
GROUP II <-- ☐ 30 - 34
☐ 35 - 39
☐ 40 - 44
GROUP I <-- ☐ 45 - 49
☐ 50 - 54
☐ 55 AND OVER

4. In the past month, have you purchased any of the following food items? (READ)

	YES	NO
LUNCHMEAT	☐	☐
HOT DOGS	☐	☐
CANNED MEATS	☐	☐

IF "NO" TO ANY OF THESE ITEMS, TERMINATE

4a. (FOR EACH ITEM, ASK:) How often do you use _____ in your household?

	LUNCHMEAT	HOT DOGS	CANNED MEATS
4 TIMES A WEEK OR MORE OFTEN	☐	☐	☐
2 - 3 TIMES A WEEK	☐	☐	☐
ONCE A WEEK	☐	☐	☐
EVERY OTHER WEEK	☐	☐	☐
ONCE A MONTH	☐	☐	☐
LESS THAN ONCE A MONTH	☐	☐	☐

RESPONDENT MUST USE AT LEAST TWO OF THESE ITEMS ONCE A WEEK OR MORE OFTEN

5. Are you, or is any member of your household, employed in market research, advertising, or for the meat industry?

☐ NO ☐ YES ----> TERMINATE

6. Is your total annual family income under or over $15,000?

TERMINATE ← ☐ UNDER $15,000
☐ OVER $15,000

6a. Is it under or over $30,000?

☐ UNDER $30,000
TERMINATE ← ☐ OVER $30,000

7. What is the occupation of the head of your household?

_____

8. When was the last time you participated in a market research project of any type?

TERMINATE <----- ☐ WITHIN THE PAST 6 MONTHS
☐ OVER 6 MONTHS AGO
☐ NEVER

9. Are you employed outside your home?

GROUP I ← ☐ NOT EMPLOYED
☐ EMPLOYED PART TIME
GROUP II ← ☐ EMPLOYED FULL TIME

10. TYPE OF RESPONDENT:

GROUP I <--- ☐ WHITE
GROUP II <-- ☐ BLACK
☐ SPANISH AMERICAN
☐ OTHER: _____

NAME _____ PHONE _____

ADDRESS _____

CITY/STATE _____ ZIP _____

RECRUITED BY: _____ DATE: _____

CONFIRMED BY: _____ DATE: _____

NJB RESEARCH
#G012

EXHIBIT 14b
PROCESSED MEATS FOCUS GROUPS

SCREENING QUESTIONNAIRE

LOS ANGELES, CALIF.

1. Are you the female head of your household?

☐ YES ☐ NO ----> TERMINATE

2. Do you do most of the grocery shopping for your household?

☐ YES ☐ NO ----> TERMINATE

3. What is your age? Are you ..... (READ)

☐ UNDER 20
☐ 20 - 24 → GROUP II
☐ 25 - 29 → GROUP II
☐ 30 - 34 → GROUP II
GROUP I ← ☐ 35 - 39
☐ 40 - 44
☐ 45 - 49
☐ 50 - 54
☐ 55 AND OVER

4. In the past month, have you purchased any of the following food items? (READ)

	YES	NO
LUNCHMEAT	☐	☐
HOT DOGS	☐	☐
CANNED MEATS	☐	☐

IF "NO" TO ANY OF THESE ITEMS, TERMINATE

4a. (FOR EACH ITEM, ASK:) How often do you use _____ in your household?

	LUNCHMEAT	HOT DOGS	CANNED MEATS
4 TIMES A WEEK OR MORE OFTEN	☐	☐	☐
2 - 3 TIMES A WEEK	☐	☐	☐
ONCE A WEEK	☐	☐	☐
EVERY OTHER WEEK	☐	☐	☐
ONCE A MONTH	☐	☐	☐
LESS THAN ONCE A MONTH	☐	☐	☐

RESPONDENT MUST USE AT LEAST TWO OF THESE ITEMS ONCE A WEEK OR MORE OFTEN

(OVER)

5. Are you, or is any member of your household, employed in market research, advertising, or for the meat industry?

☐ NO ☐ YES ----> TERMINATE

6. Is your total annual family income under or over $15,000?

TERMINATE ← ☐ UNDER $15,000
☐ OVER $15,000

6a. Is it under or over $30,000?

☐ UNDER $30,000
TERMINATE ← ☐ OVER $30,000

7. What is the occupation of the head of your household?

_____

8. When was the last time you participated in a market research project of any type?

TERMINATE <----- ☐ WITHIN THE PAST 6 MONTHS
☐ OVER 6 MONTHS AGO
☐ NEVER

9. Are you employed outside your home?

GROUP I ← ☐ NOT EMPLOYED
☐ EMPLOYED PART TIME
GROUP II ← ☐ EMPLOYED FULL TIME

10. TYPE OF RESPONDENT:

☐ WHITE
☐ BLACK
GROUP I - RECRUIT 6 SPANISH ← ☐ SPANISH AMERICAN
☐ OTHER: _____

NAME _____ PHONE _____

ADDRESS _____

CITY/STATE _____ ZIP _____

RECRUITED BY: _____ DATE: _____

CONFIRMED BY: _____ DATE: _____

MJB RESEARCH
#G012

EXHIBIT 14a
PROCESSED MEAT FOCUS GROUPS
SCREENING QUESTIONNAIRE

CHICAGO, IL.

1. Are you the female head of your household?

☐ YES ☐ NO --> TERMINATE

2. Do you do most of the grocery shopping for your household?

☐ YES ☐ NO --> TERMINATE

3. What is your age? Are you .....

TERMINATE <---- ☐ UNDER 25
☐ 25 - 34
☐ 35 - 44
TERMINATE <---- ☐ 45 AND OVER

4. In the past month, have you purchased any of the following items?

	YES	NO
Lunchmeat	☐	☐
Hot Dogs	☐	☐
*Canned Meats	☐	☐

RESPONDENT MUST HAVE PURCHASED AT LEAST 2 OF THE 3 ITEMS

4a. (FOR EACH ITEM PURCHASED) How often do you use _____ in your household?

	Lunch-meat	Hot Dogs	Canned Meats
4 times a week or more often	☐	☐	☐
2-3 times a week	☐	☐	☐
Once a week	☐	☐	☐
Every other week	☐	☐	☐
Once a month	☐	☐	☐
Less than once a month	☐	☐	☐

RESPONDENT MUST USE AT LEAST ONCE OF THESE ITEMS ONCE A WEEK OR MORE OFTEN

5. Are you, or is any member of your household, employed in market research, advertising, or for the meat industry?

☐ NO ☐ YES --> [TERMINATE]

6. Is your total annual family income under or over $15,000?

☐ OVER $15,000 ☐ UNDER $15,000 --> [TERMINATE]

6a. Is it under or over $30,000?

☐ UNDER $30,000 ☐ OVER $30,000 --> [TERMINATE]

7. When was the last time you participated in a market research project of any type?

[TERMINATE] <- ☐ WITHIN THE PAST 6 MONTHS
☐ OVER 6 MONTHS AGO
☐ NEVER

8. Are you employed outside your home?

[GROUP I] <---- ☐ NOT EMPLOYED
[GROUP I OR II] <--- ☐ EMPLOYED PART TIME
[GROUP II] <--- ☐ EMPLOYED FULL TIME

NAME _____ PHONE _____

ADDRESS _____

CITY/STATE _____ ZIP _____

Date Recruited: _____ by: _____

Date Confirmed: _____ by: _____

(NOTE: PLEASE RECRUIT RESPONDENTS WHO DO NOT KNOW EACH OTHER)

EXHIBIT 15

NAME _____ DATE _____

1. What does this label tell you about the product?

_____

_____

_____

_____

_____

_____

2. Would you purchase this product?

☐ YES

☐ NO

BILLING CODE 3410-DM-C

"They should say calcium—if they put calcium on it, nobody would say anything."

"People with dietary restrictions* * * the doctors will educate them."

"Eliminate *mechanically processed*, but it's O.K. to show *calcium*. *Powdered bone* scares you."

Consistency of the Regulation

There was definite agreement among all participants that if the USDA regulation for MPBP had to be in effect, then it should apply to all products containing MPBP. These consumers felt it would be unfair to have to label one product, i.e., hot dogs, and not another, i.e., chili, if they all contained MPBP.

"As long as you have the guidelines, they should all use it."

Reactions to Alternative Names for MPBP (Exhibits 5a, 5b, 5c, 5d)

After a lengthy discussion of the sample labels and the USDA regulation, the participants were shown alternative names for *mechanically processed beef product* in the context of the ingredient statement:

—Mechanically Processed Beef
—Mechanically Separated Beef
—Mechanically Deboned Beef

Virtually everyone agreed that the statement *mechanically processed beef* was preferable to *mechanically processed beef product*. The word *product* made them think the beef parts rather than plain beef, and without seeing the word *product*, they believed the item to be made of real beef.

"*Product* is kind of a stretching word—it can be anything."

"It's only beef—there's nothing else in there."

"Word *product* means there's more things in it other than straight beef—there would be other beef-type products."

"At least you know it's meat."

"That does sound better."

Only a few respondents felt that the statement *mechanically separated beef* explained the product. Most questioned what was separated from what, or if separate meats/ingredients were used to make the product.

"I have a visual image of fat being separated."

"Separated from the good part."

"Separated from what?"

"It doesn't really mean anything."

"They took the meat off the bone."

Most of these consumers felt that the words *mechanically deboned beef* presented the best explanation of the product, and overall their reactions to these words were positive. They felt that *deboned* explained the process and told them that the product was beef that had been taken off the bone by a mechanical (machine) process.

"Machine cuts the meat off the bone."

"That's clear."

"Tells exactly what it is."

"Everybody knows what deboned means."

A fourth ingredient statement was shown to the respondents listing *calcium* in the ingredient statement. Although these respondents were not opposed to the calcium information, they felt it should be a part of the nutritional labeling since it, technically, is not an ingredient.

"Calcium is not an ingredient."

"*Calcium* sounds better than *bone*."

Attitudes Toward MPBP After Learning What It Is

After learning that *mechanically processed beef product* actually is beef that has been taken off the bone by a machine process (which leaves a minute amount of bone, including calcium), most of these consumers were more favorably disposed toward the product than they had been in the beginning of the sessions, and many indicated they would purchase it.

"Now that I have found out what *mechanically processed beef product* is, I would probably buy it."

"It wouldn't bother me now that I am aware of it."

"If it's safe and nutritional, it wouldn't bother me."

"It doesn't bother me. I just don't know why they're making such a big deal out of it."

These consumers felt that either manufacturers or the USDA should take steps to educate consumers about the deboning process if they have to follow the USDA labeling requirements. The words *mechanically processed beef product* were confusing, and all respondents agreed that the phrase should be explained to consumers.

"Do an advertising campaign, and tell the consumers about this."

"They should tell us what *mechanically processed beef product* means. There should be a big campaign to let the consumers know what it is, and then it wouldn't bother anybody because you would know."

At first, the respondents felt that manufacturers should educate consumers about MPBP, but when discussion ensued regarding the cost of the product, they realized it would be much too costly and unrealistic for manufacturers to do this. A few respondents then put the educational burden on the government.

"If the Department of Agriculture is so concerned about consumers, why don't they do the advertising?"

"If the government tells you you have to put it on the label that big, they have to tell you what it is."

The participants were favorably inclined toward a (hot dog) product that would be as nutritional as other products on the market and yet be lower in price because of the mechanical process. Many were opposed to wasting meat when it could be used.

"They can get more of the meat."

"I think it's a cheaper hot dog."

"Why would they waste it if they could sell it?"

"If they can debone meat and give more meat, it's good."

"Good if they can lower the cost (saving meat)."

Overall, these consumers agreed that the statement *mechanically processed beef product* was both confusing and ambiguous. After learning what the statement means, most did not agree with the USDA's labeling restriction for MPBP; they felt it was adequate to list the information in the ingredient statement only.

"*Mechanically processed beef product* is misleading. If it is deboned beef, then this is a less expensive way to get the meat off the bone and you don't need to label it up front. Bone that occurs as part of the deboning process is O.K."

"If you want to sell the product, you will have to put it in more favorable terms."

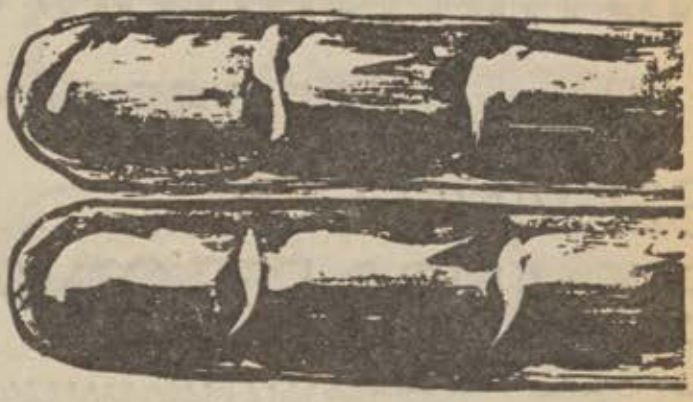
"If I were a manufacturer, I wouldn't put something as ambiguous as that on the package."

BILLING CODE 3410-DM-M

Appendix

EXHIBIT 1

Brand



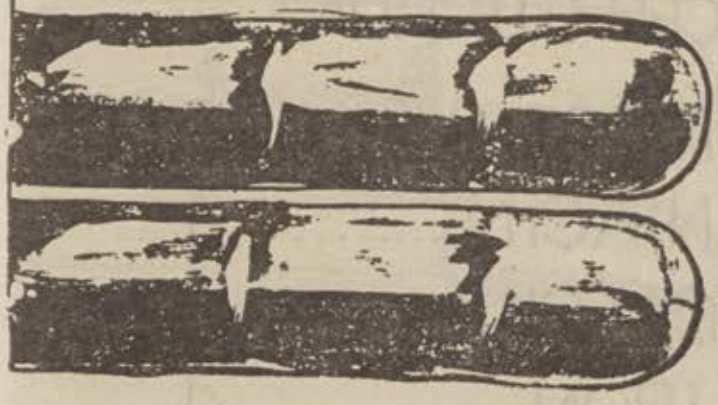
KEEP UNDER REFRIGERATION - VACUUM PACKED

U.S. INSPECTED AND PASSED BY DEPARTMENT OF AGRICULTURE EST. XXX

FRANKFURTERS

WITH MECHANICALLY PROCESSED BEEF PRODUCT

CONTAINS UP TO 0.51% POWDERED BONE



INGREDIENTS:
Beef, Mechanically Processed Beef Product, Water, Corn Syrup, Salt, Flavoring, Dextrose, Sodium Ascorbate (Vitamin C), Sodium Nitrite

NET WT. 16 OZ. (1 LB.)

EXHIBIT 2

NUTRITIONAL INFORMATION

PER SERVING

SERVING SIZE..... 1 FRANK
SERVINGS PER CONTAINER..... 10
CALORIES..... 140
PROTEIN (GMS)..... 5
CARBOHYDRATES (GMS)..... 1
FAT (GMS)..... 13

PERCENTAGES OF U.S. RECOMMENDED DAILY ALLOWANCES (U.S. RDA)

PROTEIN.....	10	RIBOFLAVIN.....	2
VITAMIN A.....	*	NIACIN.....	4
VITAMIN C.....	10	CALCIUM.....	4
THIAMINE.....	2	IRON.....	4

* CONTAINS LESS THAN 2 PERCENT OF THE U.S. RDA OF THESE NUTRIENTS

EXHIBIT 3

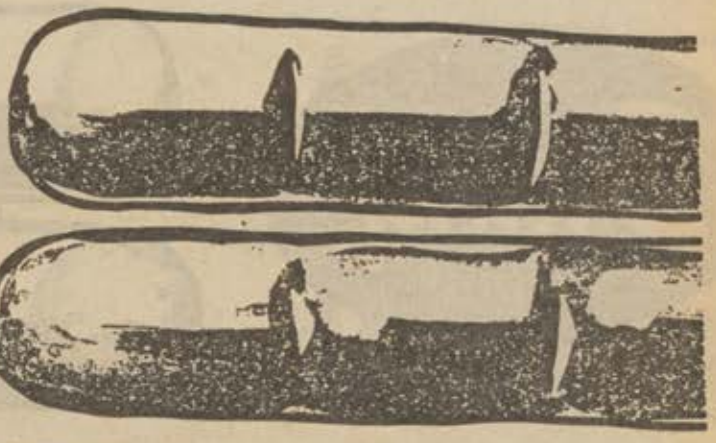
Brand
KEEP UNDER REFRIGERATION - VACUUM PACKED
U.S. INSPECTED AND PASSED BY DEPARTMENT OF AGRICULTURE EST. XXX
FRANKFURTERS
INGREDIENTS: Beef, Mechanically Processed Beef Product, Water, Corn Syrup, Salt, Flavoring Dextrose, Sodium Ascorbate (Vitamin C), Sodium Nitrite
NET WT. 16 OZ. (1 LB.)

EXHIBIT 4

Ingredients: Water, Beef, Beans, Tomatoes, Mechanically Processed Beef Product, Chili Powder, Corn Flour, Modified Food Starch, Salt, Sugar, Flavoring

EXHIBIT 5a

Brand



KEEP UNDER REFRIGERATION - VACUUM PACKED

U.S. INSPECTED AND PASSED BY DEPARTMENT OF AGRICULTURE EST. XXX

FRANKFURTERS

INGREDIENTS:

Beef, Mechanically Processed Beef, Water, Corn Syrup, Salt, Flavoring, Dextrose, Sodium Ascorbate (Vitamin C), Sodium Nitrite

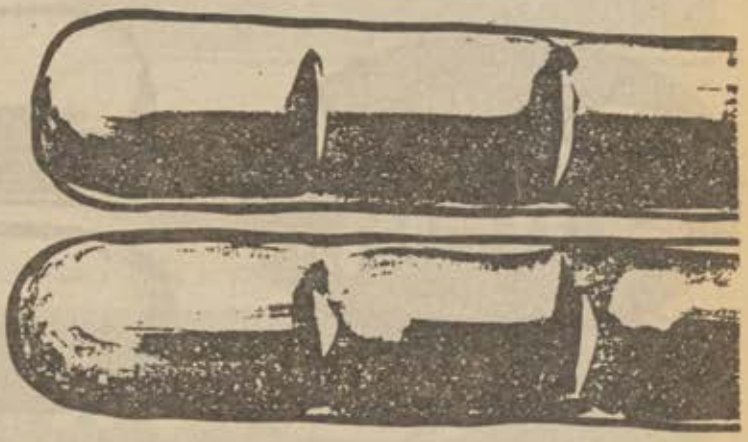
EXHIBIT 5b

INGREDIENTS:

Beef, Mechanically Separated
Beef, Water, Corn Syrup,
Salt, Flavoring, Dextrose,
Sodium Ascorbate (Vitamin C)
Sodium Nitrite

EXHIBIT 5c

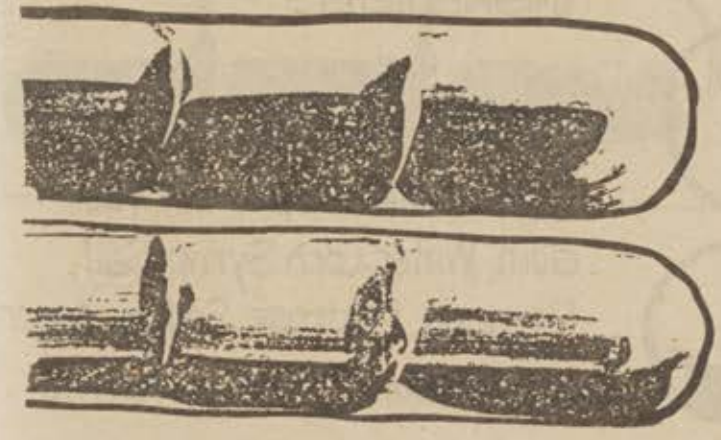
Brand



KEEP UNDER REFRIGERATION - VACUUM PACKED

U.S. INSPECTED AND PASSED BY DEPARTMENT OF AGRICULTURE EST. XXX

FRANKFURTERS

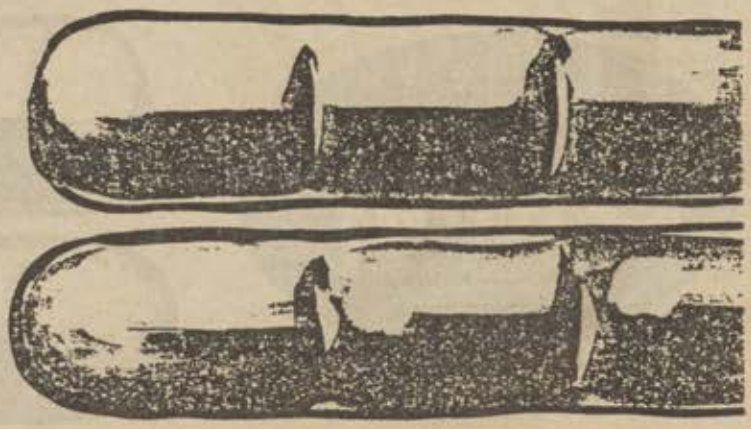


INGREDIENTS:

Beef, Mechanically Deboned Beef, Water, Corn Syrup, Salt, Flavoring, Dextrose, Sodium Ascorbate (Vitamin C) Sodium Nitrite

EXHIBIT 5d

Brand



KEEP UNDER REFRIGERATION - VACUUM PACKED

U.S. INSPECTED AND PASSED BY DEPARTMENT OF AGRICULTURE EST. XXX

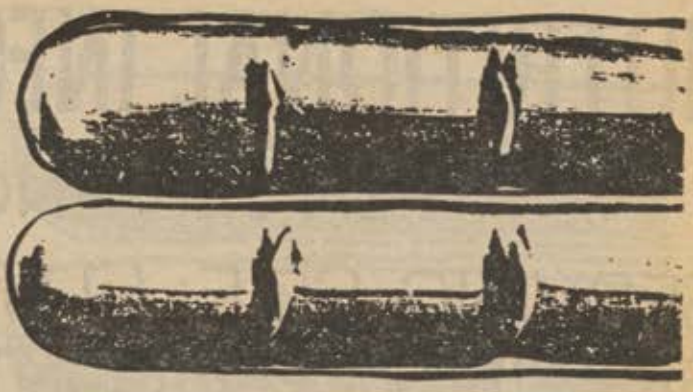
FRANKFURTERS

INGREDIENTS:

Beef, Mechanically Processed Beef contains up to 0.13% Calcium, Water, Corn Syrup, Salt, Flavoring, Dextrose, Sodium Ascorbate (Vitamin C), Sodium Nitrite

EXHIBIT 6

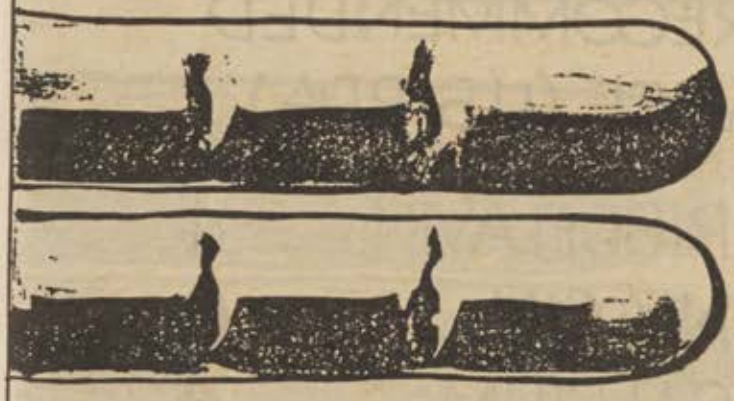
Brand



KEEP UNDER REFRIGERATION - VACUUM PACKED

U.S. INSPECTED AND PASSED BY DEPARTMENT OF AGRICULTURE EST. XXX

CHICKEN FRANKFURTERS



INGREDIENTS:
Chicken, Water, Corn Syrup, Salt, Flavoring, Dextrose, Sodium Ascorbate (Vitamin C), Sodium Nitrite

NET WT. 16 OZ. (1 LB.)

EXHIBIT 7

NUTRITIONAL INFORMATION

PER SERVING

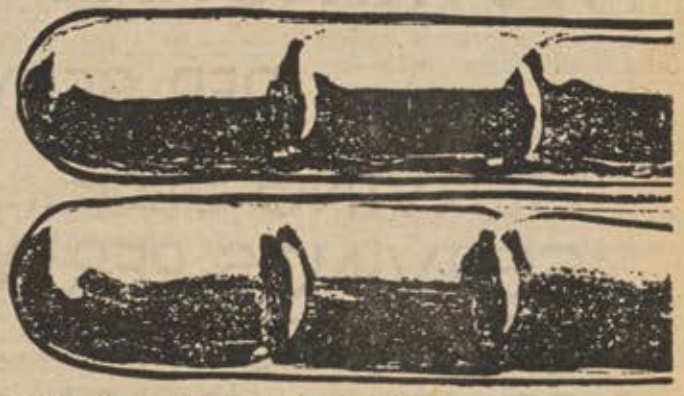
SERVING SIZE: (1 FRANK).... 2OZ.
SERVINGS PER CONTAINER... 8
CALORIES..... 130
PROTEIN (GRAMS)..... 7
CARBOHYDRATE (GRAMS)..... 2
FAT (GRAMS)..... 11

PERCENT OF U.S. RECOMMENDED DAILY ALLOWANCE (U.S. RDA)

PROTEIN	16	RIBOFLAVIN	4
VITAMIN A	0	NIACIN	6
VITAMIN C	10	CALCIUM	4
THIAMINE	2	IRON	4

EXHIBIT 8

Brand



KEEP UNDER REFRIGERATION - VACUUM PACKED

U.S. INSPECTED AND PASSED BY DEPARTMENT OF AGRICULTURE EST. XXX

FRANKFURTERS

INGREDIENTS:

Beef, Pork, Water, Corn Syrup, Salt, Flavoring, Dextrose, Sodium Ascorbate (Vitamin C), Sodium Nitrite

NET WT. 16 OZ. (1 LB.)

EXHIBIT 9

NUTRITIONAL INFORMATION

PER SERVING

SERVING SIZE	1 FRANK
SERVINGS PER CONTAINER	10
CALORIES	140
PROTEIN (GMS)	5
CARBOHYDRATES (GMS)	1
FAT (GMS)	13

PERCENTAGES OF U.S. RECOMMENDED DAILY ALLOWANCES (U.S. RDA)

PROTEIN	10	RIBOFLAVIN	2
VITAMIN A	*	NIACIN	4
VITAMIN C	10	CALCIUM	*
THIAMINE	2	IRON	4

*CONTAINS LESS THAN 2 PERCENT OF THE U.S. RDA OF THESE NUTRIENTS

Exhibit 10.—*Initial Reactions to the MPBP Label (Exhibit 1)*

[Groups 3, 4, 5, 6, 7, 8]

	Total	Los Angeles		Atlanta		Washington, D.C.	
	(53)	Group 3	Group 4	Group 5	Group 6	Group 7	Group 8
		(8)	(9)	(10)	(9)	(8)	(9)
Would purchase the product:							
Yes	18	2		6	5	2	3
No	35	6	9	4	4	6	6

What Does the Label Tell You About the Product? (Verbatim Responses)

Los Angeles

—That is a good nutrition.
—Hot dog contains beef, which is O.K., and mechanically processed beef product, which is obviously bone that has been powdered.
—Frankfurters are with mechanically processed beef product. Has 51% powdered bone. What does it mean?
—The label say it has bone powdered. I would not like this or mechanical processing.
—The contains to 0.51 powdered bone. How much meat has it?
—I would not buy mechanically processed flavoring-sugar-bone.
—Mechanically processed-powdered bone—these word would make me stop and think about how they are made and why powdered bone is added.
—I don't like the idea of having powdered bones in my food.
—It tells me what ingredients it has. But I don't understand most of the ingredients.
—I don't know if I'll buy this product because I have never seen or heard of the brand.
—That it's processed beef, and the 51% powdered bone "U.S. inspected."
—That it has 51% powdered bone.
—Has a lot of different ingredients which I don't understand so because I don't understand I probably would not buy. Too many chemicals.
—Not pure meat. What is mechanically? It has a lot of additives and the government has approved it.
—Mechanically processed beef with powdered bone. Doesn't sound very appetizing.
—That their frankfurters and are inspected by the U.S. government. Also notice that they are mechanically made. I've never seen this before.
—Brand name-Ingredients, storing instructions, weight, govt. inspection, procedure of processing (one ingredient—powdered bone—not listed in ingredients section)

Atlanta

—Low amt. (but too much) bone content sodium nitrate—wouldn't use if another brand had none mechanically processed—probably (?) cleaner than hand processed why corn syrup in our meat?
—Tells whats in it, tells how it was processed, tells its approved by govt.
—Beef product—but has .51 powdered bone (ingredients good basically)
—It tells me that it contains bone, if I had a choice of one without bone, I would buy it.
—Mechanically processed beef, powdered bone
—Refrigerate/sealed/contents/weight, sodium nitrate added.
—U.S. inspected and passed by dept. of agriculture Beef—
—It has 0.51% powdered bone, U.S. inspected
—Beef hot dogs, inspected, red in color, ingredients, mechanically produced
—The label tells the weight, that it is beef, vacuum sealed.
—No—Question—What is 51% of powdered bone—Not a high grade. just passed
—It made of beef
—It is a beef frankfurter it tell the ingredients contains 051 of powder bone
—U.S. inspected, contains powdered bone, mechanically processed beef product
—This label tells you that this is a beef hot dog and the products that are in it.
—has very little appeal, tells me it is a beef product with high concentration of additives
—It tell me it is the U.S. Inspected beef, 0.51 of powdered bone, and Vitamin C
—Because its a beef frank and its U.S. inpsected

Washington, D.C.

—Machine made and too much bone
—Word "mechanical" does not entice me to buy sounds like an inferior grade product
—"mechanically processed"—that is vague, what is mechanical processing? it also has an unappealing sound to me.
—Ingredients, weight, type of processing for beef product bone? percentage good or bad
—To many words on top, as if trying to hide the product, possibly cheap or of poor quality. Contains powdered bone!
—Well its U.S. inspected and it contains beef and vitamin C.
—This label tell weight powdered bone 0.51 beef product, sodium nitrate mechanically processed
—Mechanically process products.
—The product ingredients—beef, weight, color
—weight, govenment processed contents, how much salt, water etc.
—Bone will be ground up. Splinters will inevitably get in the product. "Mechanically processed" is an unpleasant idea with me.
—It probably has a very small percentage of beef, or any "live" ingredients, I'd class it a "fake" food.
—Ingredients in order of content, info. on bone content
—Very little, that it has powdered bone .51%, that has nitrates, beef product and mechanically processed (what do these last two mean—suspect) although inspected what grade? weight
—Has powdered bone, sodium nitrate, corn syrup, beef products.
—ingred in order name of product
—It tells me all the ingredients listed in the hotdog; not my brand after reading the ingredients

Exhibit 11.—Demographic Information

	Total	Chicago		Los Angeles		Atlanta		Washington, D.C.	
		Group 1	Group 2	Group 3	Group 4	Group 5	Group 6	Group 7	Group 8
Age of respondent:									
21 to 24	5				1			4	
25 to 29	6				3		2	1	
30 to 34	18	2		3	5		3	3	
35 to 39	25	6	7	3			4		5
40 to 44	10		1	2		5			2
45 to 54	7					5			2
Household size:									
2	14		2	2	2	1	2	3	2
3	16			1	3	4	3	1	4
4	20	4	1	2	4	3	3	1	2
5	15	4	3	2		2	1	2	1
6	4		2	1				1	
Children at home:									
Yes	57	8	7	7	7	9	8	5	6
No	12		1	1	2	1	1	3	3

Exhibit 11.—Demographic Information—Continued

	Total	Chicago		Los Angeles		Atlanta		Washington, D.C.	
		Group 1	Group 2	Group 3	Group 4	Group 5	Group 6	Group 7	Group 8
Ages of children:									
Under 2	6			1	2			3	
2 to 5	14	5	1	1	3		1	3	
6 to 9	27	3	2	3	4	2	5	3	5
10 to 13	22	8	4	2	1	1	3		3
14 to 17	32	4	9	6	1	7	1	1	3
17 to 19	12					7	3	1	1
Marital status:									
Married	55	7	7	8	6	10	7	8	2
Divorced/separated	8	1	1		1				5
Single	6				2		2		2
Education of respondent:									
Some high school	3	1			1			1	
Completed high school	20	1	4	4	2	4	3	1	1
Some college	21	4	3	1	5	3	1	3	1
College degree	15	2	1	3	1	2	1	1	4
Technical/trade school	10					1	4	2	3
Occupation of respondent:									
Employed full time	34		7		9		9		9
Employed part time	10			5		3		2	
Manager/proprietor	2			1			1		
Sales	4			3					1
Professional/technical	3								3
Clerical	20		4	1	8		4	1	2
Service worker	11		2			3	3	1	2
Blue collar	3		1		1		1		
No answer	1								
Not employed	25	8	1	3		7		6	
Occupation of spouse:									
Manager/proprietor	11	2	3	3	1			2	
Sales	4			2			2		
Professional/technical	7			2	1	4			
Clerical	6	1				4	1		
Service worker/military	11	1			2	1	2	3	2
Skilled blue collar	14	3	4		2	1	2	2	
Non-skilled blue collar	2			1				1	
Total annual family income:									
$15,000 to $19,999	25	1		5	5	1	3	5	5
$20,000 to $24,999	16	4		1	3	3	3		2
$25,000 to $29,999	27	3	8	2	1	6	3	2	2
No answer	1							1	
Bases:									
For occupation of spouse	(55)	(7)	(7)	(8)	(6)	(10)	(7)	(8)	(2)
For all others	(69)	(8)	(8)	(8)	(9)	(10)	(9)	(8)	(9)

Exhibit 12.—*Usage of Canned Meats*

	Chicago		Los Angeles		Atlanta		Washington, D.C.	
	Group 1	Group 2	Group 3	Group 4	Group 5	Group 6	Group 7	Group 8
	(8)	(8)	(8)	(9)	(10)	(9)	(8)	(9)
Lunchmeat:								
4 times a week or more often	6	1	5	8	7		6	NA.
2-3 times a week		6	3	1	1	2	1	NA.
Once a week		1			2	7	1	NA.
Hot dogs:								
4 times a week or more often			2	1			2	NA.
2-3 times a week	4	1	4	4	2	2	2	NA.
Once a week	4	3	1	4	5	6	2	NA.
Every other week		3	1		3		2	NA.
Once a month						1		NA.
Less than once a month		1						NA.
Canned meats:								
4 times a week or more often			2					NA.
2-3 times a week	2		1	1	6	1		NA.
Once a week		3	3	4	3	6	7	NA.
Every other week	2	3	1	2	1	1		NA.
Once a month	2	2	1	2		1	1	NA.
Less than once a month	2							NA.

NA = Information not available.

EXHIBIT 13.—PROCESSED MEATS CONSUMER FOCUS GROUPS DISCUSSION OUTLINE

Introductions: Name, Occupation, Family, etc.

I. Usage of Processed Meat Products

A. What prepared products are used (other than fresh)?

1. Canned meats
2. Refrigerated packaged meats
3. Prepared foods containing processed meats

B. What do consumers like/dislike about processed meat (products)?

1. Cost
2. Taste
3. Nutritional value
4. Convenience

C. How are processed meats used in the household?

1. Lunches
2. Snacks
3. Main meals
4. Used alone/with other foods

D. Why are processed meats used?

E. What are consumers' awareness and usage of processed poultry products (chicken, turkey, franks and bologna)?

1. Which products have they used? Why?
2. How are these products used?
3. Overall reaction to these products?

II. Reaction to MPBP Labeling

A. (Show meat product with present USDA labeling requirements) (frankfurters).

1. What does this label tell you about the product?
2. Would you purchase this product? Why/why not?
3. Based on the description on the label, describe the product.
4. What do specific words/phrases *mean* to you?

a. Mechanically processed meat product

b. Powdered bone (what does it do?)

5. Can you identify the ingredients in this product?

a. Where do you look to identify the ingredients?

b. Which ingredient is present in the greatest amount in this product? Why do you say that?

6. Do you feel this product is safe, nutritious and wholesome? (Show nutritional labeling after discussion.)
7. Compared to canned sardines—does this product contain more or less bone? Why?
8. What is calcium? Where does it come from?
9. Is the label misleading? If so, in what way?

B. Show label without restrictions (frankfurters).

1. What does this label tell you about the product?
2. Would you purchase this product? Why/why not?
3. Can you identify the ingredients in this product?
4. Is this product safe, nutritious and wholesome?
5. Is this label confusing? Why/why not?

C. Reaction to the USDA regulations on other products containing processed meats.

1. Canned chili (show posters)
2. Explain proposed USDA regulations

a. Mechanically processed (meat) product in letters at least half as large as the product name (not to exceed 20% of the entire product).

Hot dogs have the most; chili the least

b. Indicating the percentage of powdered bone (maximum 0.6%) in letters at least one-quarter size of the product name

3. Should all products containing processed meat products have the same labeling restrictions? Why/why not?

4. Are some of these labels misleading? If so, in what way?

5. Is this labeling fair to consumers?

6. Is it necessary to list these ingredients on the front of the package (other than ingredient statement)?

7. Is it confusing to list these ingredients on the front of the package?

8. Are the letter sizes misleading?

9. Do you read labels?

a. Do you look at the front/back of the package?

b. How do you know which ingredient makes up the largest percentage of the product?

D. Consumers' reactions to names for MPBP.

1. Mechanically processed beef (product).

2. Mechanically separated beef (product).

3. Mechanically deboned beef (product).

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A. Consumers' reaction to wasting red meat.

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Economic Impacts of Regulations on Mechanically Deboned Red Meats*

*By J. Bruce Bullock and Clement E. Ward***

July 1980.

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ECONOMIC IMPACT OF REGULATIONS ON MECHANICALLY DEBONED RED MEATS

Mechanical deboning of meat is a technology that enables processors to obtain more pounds of edible meat from beef, pork, and lamb carcasses than is possible with hand boning techniques. In response to a court ruling growing out of concerns and questions about the healthfulness of mechanically deboned meat (MDM), the USDA ordered in September 1976, that the official mark of federal inspection could no longer be placed on MDM. This in effect stopped the domestic production and use of MDM. After a period of study and public hearings, the USDA developed a set of regulations governing the production and use of MDM that became effective in July 1978. These regulations permit the production and use of MDM, but the meat processing industry has generally concluded that MDM production is not economically feasible under the existing regulations. Consequently, relatively little MDM has been produced since 1978.

The intended purpose of the regulations was not to prevent the production and use of MDM.

> "This regulation is designed to permit the use of mechanical deboning process, which constitutes a more efficient means of extracting meat products than is possible in traditional hand deboning operations. It is estimated that 3–5 pounds of additional pork product per carcass and 7–15 pounds of additional beef product per carcass can be obtained from the mechanical deboning of meat. This regulation will ensure the wholesomeness and nutritional integrity associated with traditional meat products. The labeling requirements specified in this regulation reflects the Department's recognition of the importance of complete and accurate labeling to provide informed consumer purchasing choices."[1]

However, the regulations have had the unintended effect of making it uneconomical to use an efficiency-improving technology.

This development raises two important questions.

(A) What is net economic value of the MDM technology to the economy and hence what is the nature and magnitude of costs and benefits associated with continuing to impose the regulations?

(B) What type of regulations, if any, are needed in order to provide consumers with adequate information about MDM as a food ingredient and yet not prevent the use of the efficiency-increasing MDM technology?

[1] USDA–FSQS, *Impact Analysis: Mechanically Processed (Species) Product*, June 2, 1978.

The purpose of this report is to provide information relevant for answering these questions. This report deals only with the economic dimensions of the impact of regulations governing the production and use of mechanically deboned meat.

This analysis is based on two key assumptions. First, it is assumed that there are no harmful effects of consuming MDM. It is recognized that this may not be true for individuals that must restrict their intake of calcium. It is further assumed that the product contents portion of the product label will contain enough information to allow these individuals to avoid consuming MDM in unhealthy amounts. The number of people in this category is believed to be small and to have a negligible impact on the demand for products containing MDM. Evaluation of the health aspects of MDM are beyond the scope of an economic analysis and have been studied thoroughly by the USDA. The results of those studies indicate the above assumption is appropriate.

Second, it is assumed that consumers will readily accept MDM as an ingredient in processed meat products at prices that provide an adequate incentive for the production and use of MDM. The ready acceptance by consumers of mechanically deboned poultry and fish products plus the growing production of MDM prior to the imposition of labeling restrictions provides evidence that this assumption is valid. Hence, regulations that result in a restricted output of MDM prevent meat processors from making the most efficient use of available resources. If the assumption is not true, then regulations are unnecessary to prevent MDM from being produced. The marketplace will provide the final test of consumer acceptability. The risk of consumer acceptability will be borne by processors willing to invest in mechanical deboning systems.

The objectives of this analysis are:

(1) To identify the nature of the economic contribution that MDM technology can have on the U.S. economy and to develop estimates of the dollar value of this contribution.

(2) To identify the nature of the economic impacts of regulations that restrict the production of MDM to less than economically feasible levels and to develop estimates of the economic costs of current regulations governing the production and use of MDM, and

(3) To develop information for answering question B above.

Economic Nature of the Problem

Use of MDM technology makes it possible to increase meat supplies without increasing the number or size of animals slaughtered. The economic value of an efficiency-increasing technology of this type is illustrated in Figure 1.

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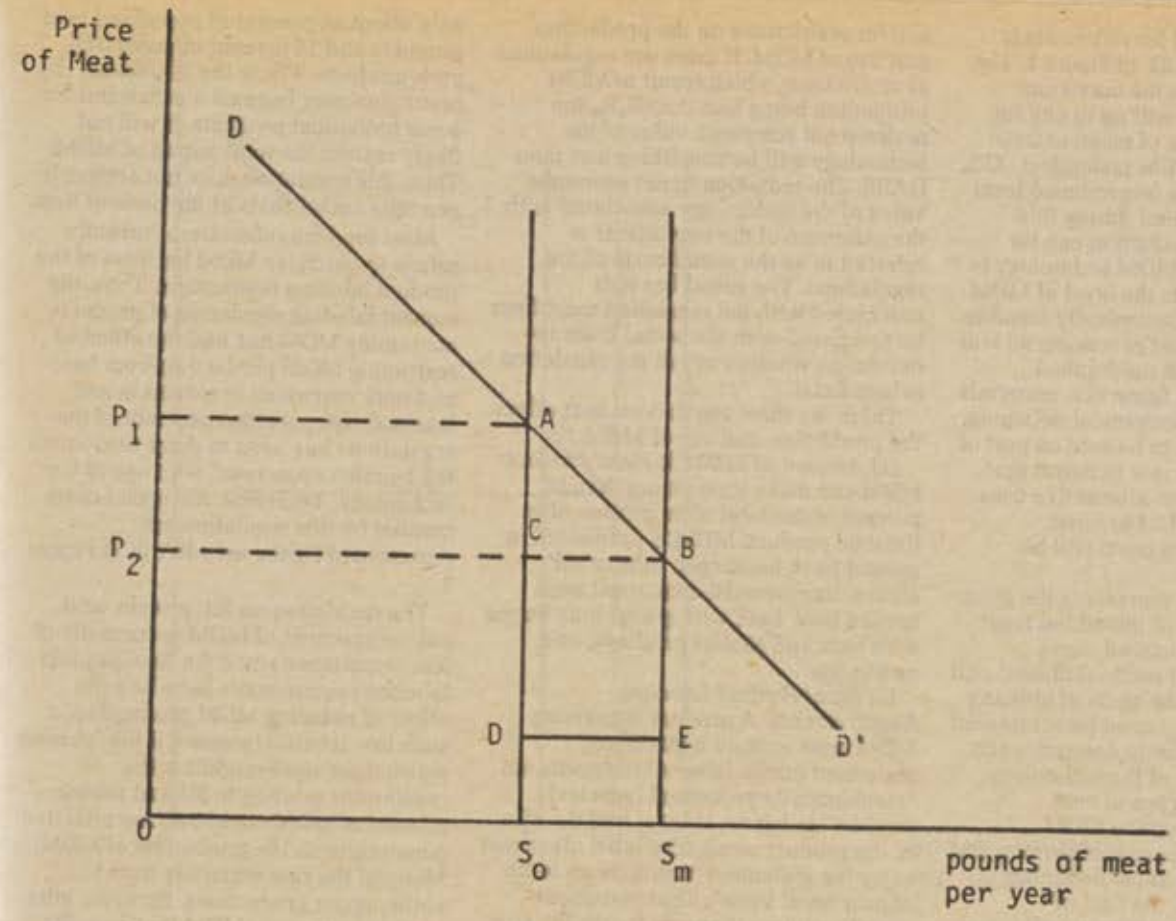

Figure 1. Illustration of the Net Economic Value of Efficiency Increasing Technology Such as Mechanical Deboning

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Consumer demand for red meats is represented by line DD' in Figure 1. The demand curve shows the maximum price consumers are willing to pay for alternative quantities of meat, *ceteris paribus.*[2] Without MDM technology, OS_o units of red meat can be produced from the animals slaughtered during this period. Red meat production can be expanded to OS_m if MDM technology is used. S_oS_m represents the level of MDM production that is economically feasible. Not all potential MDM raw material will be processed through mechanical deboning machines. Some raw materials are unsuitable for mechanical deboning, others will continue to be sold as part of retail cuts. Only the raw material that can be bid away from alternative uses and yield enough MDM to cover mechanical deboning costs will be processed.

The area S_oABS_m represents the gross value to consumers of the added meat supplies since the demand curve denotes the value of each additional unit of meat. However, the costs of utilizing the MDM technology must be subtracted from S_oABS_m in order to determine the net economic value of the technology.

There are three types of cost associated with using the MDM technology. First, the cost of owning and operating the mechanical deboning machinery. Second, the cost of purchasing (foregoing the sale of) raw materials from which the MDM will be obtained. Third, the additional costs of inspection and any other costs associated with complying with special regulations (if any) regarding the production of MDM. The combination of these costs per unit of MDM is denoted by the distance S_oD in Figure 1. The area S_oDES_m represents the total costs of using the MDM technology.

The net economic value to the economy of using MDM technology is therefore represented by the area DABE. This represents the value added by recovering and using MDM in higher value processed meats rather than discarding it with lower valued inedible portions of the carcass. The dollar value of the technology can be estimated based on knowledge of the sensitivity of retail meat prices to changes in meat supplies and estimates of MDM production that could be expected in the absence of regulations.

The above discussion illustrates the nature of the economic value of MDM technology in the absence of regulations and/or restrictions on the production and use of MDM. If there are regulations or restrictions which result in MDM production being less than S_oS_m the realized net economic value of the technology will be something less than DABE. The reduction in net economic value of the technology associated with the existence of the regulations is referred to as the social costs of the regulations. The social benefits associated with the regulation must then be compared with the social costs to determine whether or not the regulation is beneficial.

There are three regulations that affect the production and use of MDM.

(1) *Amount of MDM in Final Product:* MDM can make up no more than 20 percent of the total meat portion of a finished product. MDM is prohibited in ground beef, hambuger, fabricated steaks, barbecued meats, roast beef, corned beef, beef with gravy, lima beans with ham and similar products, and meat pies.

(2) *Final Product Labeling Requirements:* A product containing MDM must contain a qualifying statement on the label which spells out "mechanically processed (species) product" in letters at least half the size of the product name. The label also must carry the statement "contains up to 2% of powdered bone". That statement must be no less than one fourth the size of the product name.

(3) *MDM Protein, Fat, and Calcium Content:* MDM can contain no more than 30 percent fat and 0.75 percent calcium and no less than 14 percent protein.

The restriction on amount of MDM in final products is not likely to become an effective constraint on production and use of MDM. About 17 percent of total beef consumption and about 17 percent of total pork consumption are processed meat products to which MDM can be added under current regulations.[3] Field reported the upper limit on MDM production at 16 pounds per beef carcass and 4 pounds per pork carcass.[4] This amounts to 2.7 and 2.9 percent increases in beef and pork supplies, respectively, assuming the average beef carcass weighs 600 pounds and the average pork carcass weighs 137 pounds and assuming all potential raw materials used. Hence, at maximum possible output, MDM could account for only about 14 percent of processed beef products and 15 percent of processed pork products. While the 20 percent restriction may become a constraint for some individual products, it will not likely restrict the total output of MDM. Thus, this regulation does not appear to generate social costs at the present time.

Most food manufacturers currently refuse to purchase MDM because of the product labeling restrictions. Thus, the current labeling regulation of products containing MDM has had the effect of restricting MDM production from beef and pork carcasses to extemely low levels. Consequently, the result of the regulations has been to deny consumers the benefits associated with use of the technology. Therefore, the social costs created by this regulation are represented by the area DABE in Figure 1.

The restriction on fat, protein, and calcium content of MDM is currently of less importance since the final product labeling requirements have had the effect of reducing MDM production to such low levels. However, if the labeling restrictions were modified, the regulations relating to fat and protein content of MDM could become effective constraints on the production of MDM. Many of the raw materials from fed cattle, upper grade cows, barrows, gilts, and sows produce MDM that exceeds the fat content restrictions or fails to meet the minimum protein requirements. Thus, a considerable portion of the potential MDM supply will not be produced as a result of the fat and protein restriction. The potential impact of this restriction on MDM production will likely increase in the future as boxed beef production expands, thus increasing the amount of raw materials from fed cattle available for mechanical deboning.

The potential impact of the fat and protein content restrictions is illustrated graphically in Figure 2 assuming that the labeling restrictions did not exist. The fat content restrictions would have the effect of restricting MDM output to S_oR rather than the economically feasible level S_oS_m. Consequently, a portion of the potential benefits of MDM would not be realized because of the restriction. The area FGBE represents the social cost that would be associated with the fat and protein restrictions if the labeling regulations were removed.

BILLING CODE 3410-DM-M

[2] A Latin term meaning everything else held constant.

[3] See page 13 of this report for an elaboration of this point.

[4] Field, R. A., "Increased Animal Protein with Mechanical Deboners", *World Review of Animal Production*, Vol. 12 (1976), pp. 61–73.

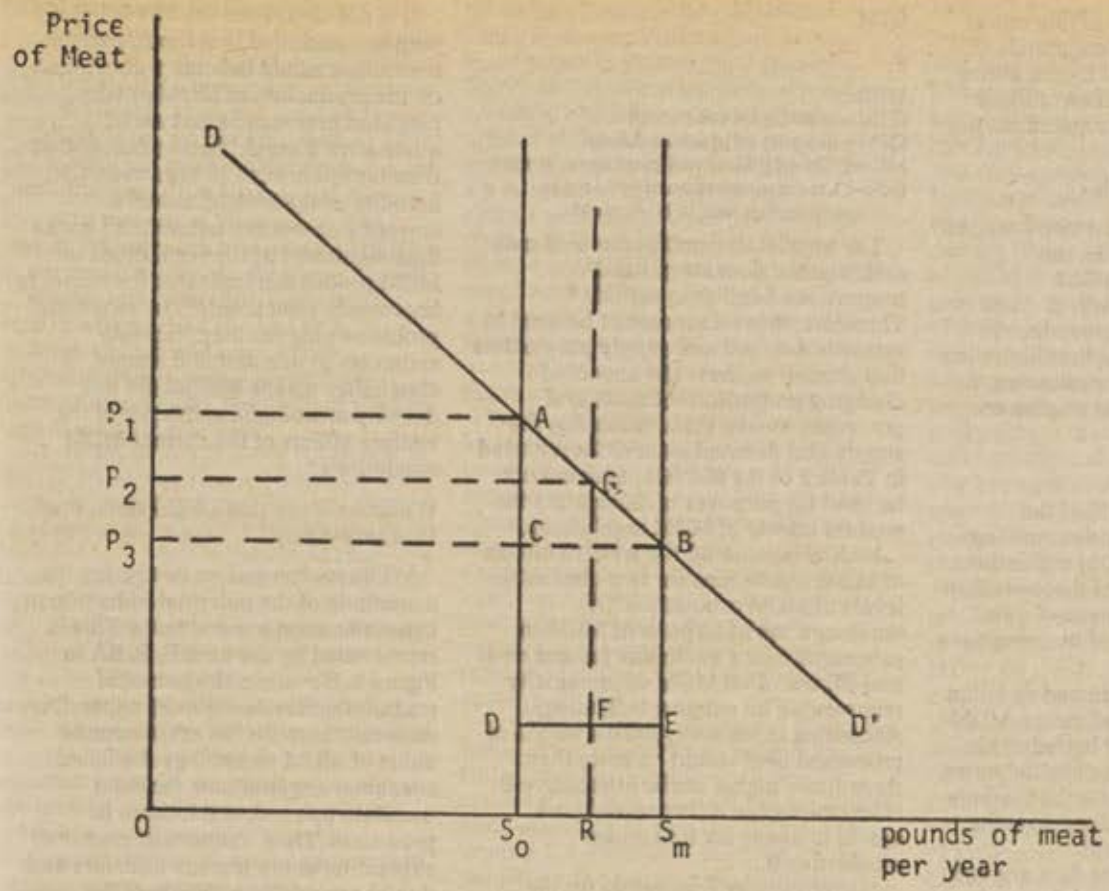

Figure 2. Illustration of Impact of Fat and Protein Content Restrictions on the Net Economic Value of MDM Technology

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The following sections of this report develop estimates of the magnitude of the social costs identified by the above framework. The implications of these results for modifying the regulations are also discussed.

Review of Previous Studies

There have been at least two previous studies aimed at examining the economic impact of the MDM regulations.[5] However, both of these studies have serious shortcomings in methodology and/or data that limit their usefulness as a basis for evaluating the current regulations. These studies are briefly reviewed below.

McNiel Study

McNiel correctly identified the analytical framework for determining the welfare effects of MDM regulations. However, his estimates of these welfare effects are incorrect becuase of data limitations and because of inappropriate model specification.

Beef and pork are consumed as either table cuts or as processed meats. MDM would be used as a meat ingredient in processed meats. Thus, as McNiel notes, one would ideally separate the markets for beef and pork into submarkets for table and processed meats. Unfortunately, time series data are not available showing the breakdown of beef and pork consumption between table cuts and processed meats.

In an effort to solve this data problem, McNiel generated a data series decomposing beef and pork consumption into table cuts and processed meats. However, the data series he developed cannot be used to develop estimates of supply and demand responses to changes in prices of table cuts and processed meats. He disaggregated total beef and pork consumption into "two components, table cuts and processed meats, using share estimates obtained from USDA consumption surveys which were consistent with the market shares used in constructing the price series" (McNiel, p. 4). The following relationship exists in the McNiel consumption data for both beef and pork:

$QTM = \alpha MC$

$QPM = (1-\alpha)MC$

Thus, $QPM = \frac{QTM}{\alpha}(1-\alpha)$

Where:
QTM = quantity of table meat
QPM = quantity of processed meat
MC = QTM + QPM = total meat consumption
$0 < \alpha < 1$ is the proportion of total meat consumption that is table meat.

The McNiel data maintain table cuts and processed meats in fixed proportions in all time periods.[6] Therefore, these data cannot be used to estimate demand and supply parameters that proport to show the impact of changing proportions of table and processed meats. Unfortaunately, the supply and demand elasticities reported in Table 2 of the McNiel paper cannot be used for purposes of calculating the welfare effects of MDM regulations.

McNiel calculated the welfare effects of MDM regulations for two alternative levels of MDM production: (A) maximum use of 20 percent MDM in processed meats excluding ground meat and (B) use of all MDM economically recoverable by existing technology. According to his analysis, the output of processed beef would be more than three times higher under alternative B than alternative A. Processed pork would increase six fold under alternative B.

It is physically impossible for the industry to produce enough MDM for the 20 percent restriction to become effective. McNiel estimates that 39.2 percent of beef is consumed as processed meats. Agnew reports that ground beef accounts for about 57 percent of processed beef consumption.[7] Thus (.43)(39.2) = 16.9 percent of beef consumption is processed meat to which mechanically deboned beef (MDB) could be added under current regulations. Field indicates that the upper limit of MDB production is about 16 pounds per carcass. This is a 2.7 percent increase in beef supplies and the maximum processed beef component of beef consumption could equal

$\frac{2.7}{16.9+2.7}$

= 13.7 percent MDB.[8] Thus, the 20 percent restriction will not be a limiting factor as McNiel suggests.

It is not clear from the McNiel study why he concluded that the 20 percent restriction would become a constraint on the production of MDM or why output of processed meat under alternative B would be so much higher than for alternative A. However, the inability of the McNiel model to correctly assess the nature (and hence the magnitude) of the regulations on MDM production indicates the model is improperly structured.[9] The structural problems plus the inappropriate estimates of demand and supply elasticities means McNiel did not develop meaningful estimates of the welfare effects of the current MDM regulations.

Williams Study and USDA Review of Williams Study

Williams focused on measuring the magnitude of the potential reduction in consumer meat expenditures. This is represented by the area $P_1 P_2 BA$ in Figure 1. However, the potential magnitude of reduced meat expenditures does not measure the net economic value of MDM technology. Reduced consumer expenditures for meat translate into reduced income to producers. Thus, changes in consumer expenditures are income transfers and do not provide an estimate of the economic value of a technology such as mechanical deboning of meat and hence do not measure the social costs associated with regulations that restrict MDM production.

Williams estimated the price change that would be caused by expanded MDM production. However, either the first column of Tables 4 and 5 in the Williams report is incorrectly labeled, or the retail price regression equations were incorrectly used to estimate the price impact. The predicted prices under assumptions 1 and 2 should have been subtracted from the predicted price based on the actual consumption and income levels for each period rather than subtracted from the actual retail price as indicated in Tables 4 and 5 of the Williams report.

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[5] Williams, Willard F. "Economic Evaluation of Potentials Through Mechanical Deboning of Red Meats", TARA, Inc., Lubbock, Texas, April, 1979; and McNiel, D. W. "Economic Welfare and Food Safety Regulations: The Case of Mechanically Deboned Meat", *American Journal of Agricultural Economics*, Vol. 62, No. 1, February 1980, pp. 1–9.

[6] Based on the footnote to McNiel's Table 2, the table cuts account for 60.8 and 77.6 percent of total beef and pork consumption, respectively. Thus QPB = 0.64QTB and QPP = 0.29QTP in McNiel's data.

[7] Agnew, D. B., "The Outlook for Hambuger", *Livestock and Meat Situation* LMS–226, April 1979, pp. 26–28, USDA, ESCS, Washington, DC.

[8] If the maximum four pounds of mechanically deboned pork (MDP) are produced from each pork carcass weighing .62(220) = 137 pounds, MDP will increase pork supplies by 2.9 percent. If 25 percent of processed pork is fresh ground (probably an overestimate) then MDP can account for at most

$\frac{2.9}{16.8+2.9}$

= 15

percent of pork supplies. In reality, MDP production per carcass will be less than the level used in these calculations.

[9] More detailed discussion of the nature and implications of the improper structuring of the McNiel study can be provided if necessary.

USDA Review of Williams Report

The USDA review of Williams' report correctly points out that Williams considerably overstates the potential impact of MDM technology on the Consumer Price Index. The CPI is a weighted average of prices of individual consumer goods. Meats account for about 2.5 percent of the total market basket.[10] Thus, each one percent change in the price of meat would cause the CPI to change by 0.025 units. Williams' equation expressing the CPI as a function of beef and pork prices attributes more importance to these items in determining the value of the CPI than is actually the case.

However, there are some comments in the USDA review that are incorrect. For example, in discussing Williams' price forecasting equation the USDA review states" * * * what is the confidence interval around the predicted dependent variable? Using 1978 actual data, what was the predicted price per pound using assumed per capita consumptions? Given an R^2 of only 0.92, there is reason to suspect that the 4.2 cent differential may statistically be no different than the actual 1978 price".[11] The R^2 of an equation provides no information about the level of significance of a predicted change in the dependent variable associated with an observed or assumed change in one or more of the independent variables. The relevant question is whether or not the individual regression coefficients are significantly different from zero. Unfortunately, Williams did not provide this information for the coefficients he estimated. However, there are numerous published estimates of beef and pork elasticities and price flexibilities that are significantly different from zero. The most recently published estimates are by Eldon Ball of the USDA.[12] His estimates indicate that a one percent increase in the quantity of beef will cause a 1.537 percent decline in the retail price of beef, *ceteris paribus*. Ball's estimate of the price flexibility for pork is −1.549.

Another erroneous statement in the USDA review is, "Using Professor Williams' assumption 2 and his procedure, prices in 1978 would have been 23.5 percent higher than in 1976. Given the statistical variability of the estimated equations, we doubt there is a meaningful, measurable difference. Using Professor Williams' data, retail meat prices in 1978 were 27 percent above 1977 levels regardless of what is assumed about the availability of mechanically deboned processed product". Again, the USDA reviewers are comparing the projected price change with the average year-to-year change in retail beef prices. The price change associated with expanded meat supplies, *ceteris paribus*, will be significantly different from zero even though it may be small relative to the average annual price change caused by fluctuations in supply and/or demand.

Widely accepted research results leave little doubt that a change in the quantity of meat will have a direct and significant impact on the price of meat. The magnitude of the expected price change relative to the year-to-year variation in retail meat price (i.e., the confidence interval about the regression line) is irrelevant for purposes of examining the economic impact of regulations concerning the production and use of MDM.

In commenting on Williams' estimated reduction in consumer expenditures, the USDA reviewers made the following comment. "If it is true that the estimated price elasticity of demand for meat is around 1, neither total revenue for the industry nor consumer expenditures for meat would be significantly affected by the price decline resulting from the increased supply." The condition of no change in expenditures as a result of price changes hold *only* if the price elasticity is *exactly equal* to one. Ball estimates that the price elasticity for red meats is −0.62. If this is true (and it is similar to other estimates), even a one or two percent increase in meat supplies through MDM production would have a sizable impact on total meat expenditures.

In summary, neither the Williams study nor the McNiel study accurately assessed the economic impacts of MDM regulations. Furthermore, the USDA review of Williams' study did not improve upon the information developed by Williams.

Potential Demand and Supply for Mechanically Deboned Meats

This section relies on information obtained from a mail survey of meatpackers and processors who have or are commercially producing or experimenting with MDB and MDP, and published information.

Potential Demand

MDM can be used as an ingredient in numerous meat products such as sausage products (including fresh, uncooked cured, dried, semi-dried, franks/weiners, and bologna), sliced and loaf luncheon meats, fresh or frozen convenience foods (e.g., pizzas, dinners, and entrees), meat patties, canned luncheon meats, hash products, chile con carne, canned vienna sausage, franks and weiners, meat spreads, meat stews, and soups. As noted earlier, current regulations prohibit the addition of MDM to ground beef and some other processed meat products. Potential users of MDM include a broad spectrum of food processors, including independent sausage makers (both large and small), beefpackers that process beef, porkpackers that process, pork, retail and institutional firms that have processing plants, canners, soup manufacturers, and specialty food manufacturers (e.g., frozen ethnic products, frozen pizzas, etc.)

MDM has some characteristics that affect the amount of MDM that processors will add to their receipes . MDP had a soft and oily texture which may adversely affect the taste and texture of the final products at high formulation levels and MDP lacks the binding characteristics desirable for many processed products. Survey respondents indicated the maximum use of MDP was 5–10 percent of the meat block in the formulation for some products before encountering oxidation problems which produced a slight rancid taste. Proper handling and an effective quality control program reduced oxidation problems but recommended formulations remained in the 5–15 percent range, although a few users included up to 20 percent of MDP in their products.

Industry experiences differ on the amount of MDB that can be used in products. Some reported usage at up to 50 percent of the formulation without encountering problems, but others found MDB altered product color, resulting in a perceived drop in quality by processors or their customers. Most MDB users included it at a 10–15 percent formulation level.

A gritty texture occured in some final products when MDM (both MDB and MDP) was used at high formulation levels. However, it has been experimentally formulated at 100 percent and made into sausage patties with apparent success. The industry, through a process of trial and error, will determine the acceptable usage level of MDM in various final products. The extent will vary from 5–10 percent in most processed meats but may be as high as 100 percent in others if MDM is allowed to be the entire meat block.

[10] *The Consumer Price Index, Revision-1978, Facts About the Revised Consumer Price Index*, U.S. Department of Labor, Bureau of Statistics, 1978.

[11] "Only" was a poor choice of words. The possible range of R^2 values is $0<R^2<1.0$. An $R^2=.92$ is usually considered to be quite high.

[12] Ball, Eldon, "Elasticities and Price Flexibilities for Food Items", *Livestock and Meat Situation*, LMS 229, October, 1979, pp. 22–25.

Use of MDM may also be limited by market penetration obstacles. Proven recipes, perceived quality, and quality control are important to sausage makers and food processors. Small-scale processors and ingredient buyers for larger firms may be reluctant to substitute MDM for traditional ingredients in age-tested formulations even at a price discount unless significant cost savings can be expected and quality is not adversely affected. For example, suppose MDM with 50 percent fat is priced at 30¢/lb., 50 percent lean trimmings at 40¢/lb., and 75 percent lean trimmings at 90¢/lb. Then a final product using 10 lbs. of MDM and 40 lbs. of 75 percent lean trimmings costs 78¢/lb. compared to 80¢/lb. for 10 lbs. of 50 percent lean trimmings and 40 lbs. of 75 percent lean trimmings. Ingredient buyers may not immediately switch to MDM unless they feel 2¢/lb. is a significant cost reduction and product quality (1) is unchanged, (2) is reduced by less then 2¢/lb. in the eyes of consumers, or (3) is increased. Similarly, buyers of the final product may not switch to the product with MDM initially for 2¢/lb. price discount unless the product meets the same product quality conditions.

Suppliers noted that prior to the current regulations, MDM was and is discounted in the marketplace relative to comparable alternative ingredients. MDM prices were from 60–80 percent of the comparable percent lean trimmings price.

Table 1 shows the high and low prices for two types of lean beef and pork trimmings and estimated MDB and MDP prices between June 1979 and May 1980. The lower price for MDM may be an incentive for potential users to substitute MDM for alternative ingredients provided final product quality is not significantly affected given the price relationships. Closing prices reported by the *National Provisioner* for the week ending June 27, 1980 for 75 percent lean beef trimmings were 100½¢/lb., meaning the MDB price would probably have been between 60–80¢/lb. MDB could also substitute for imported manufacturing beef. The reported price of imported 85 percent lean cow beef was 119½¢/lb., which translates into a 72–96¢/lb. price for 85 percent lean MDB. A comparable price relationship exists for pork, where the price for 80 percent lean pork trimmings was reported to be 73¢/lb. and 80 percent lean MDP could be substituted for 44–58¢/lb.

Table 1.—*Minimum and maximum lean trimmings prices and estimated MDB and MDP prices, June 1979–May 1980* [1]

Item	Cents per pound	
	Minimum	Maximum
Beef:		
50% lean trimmings	42	65
50% MDB—Low [2]	25	39
50% MDB—High [3]	34	52
75% lean trimmings	67	113
75% MDB—Low	52	68
75% MDB—High	70	90
Pork:		
50% lean trimmings	22	49
50% MDP—Low	13	29
50% MDP—High	18	39
80% lean trimmings	49	81
80% MDP—Low	29	49
80% MDP—High	39	65

[1] Trimmings prices reported by the National Provisioner's *Daily Market and News Service.*
[2] Low MDM price is 60 percent of comparable trimmings price.
[3] High MDM price is 80 percent of comparable trimmings price.

Potential Supply

The potential supply of MDM is dependent on the available raw materials from different classes of livestock. Some fresh cuts of beef traditionally are merchandised with bone included (e.g. pork spare ribs, pork chops, T-bone steaks, and bone-in chuck roasts). These raw materials will be unavailable for mechanically deboning because processors can receive a greater return from merchandising bone-in cuts than by mechanically deboning them and marketing MDM. Other raw materials are too hard for MDM machinery or can be adequately hand deboned (e.g. beef round bone), making the potential yield of MDM from these raw materials uneconomical.

Table 2 identifies the raw materials sources for MDM, and the estimated yield and nutrient composition of the resulting MDM product. Information was compiled from survey data, industry contacts, and published information.[13] Data are a combination of results from both commercial and experimental operations. There is wide variation in types and definitions of raw material, their yield of MDM, and resulting nutrient composition. Important factors include degree of finish of the livestock, extent and method of hand deboning prior to mechanically deboning, methods of cutting carcasses and variation in resulting cuts.

Table 2.—*Potential Raw Materials for Mechanically Deboning, and the Estimated Output and Nutrient Composition of MDM*

Raw materials		MDM				
Source	Volume per carcass (pounds)	Volume per carcass (pounds)	Yield of MDM (percent)	Composition (percent)		
				Protein	Fat	Calcium
Cattle:						
Neck and atlas	9–11	2½–4	25–45	14–19	14–25	¼–⅝
Back	13–18	3–4½	20–40	11–15½	26–34	½–1
Ribs	26–33	4½–8½	18–34	9–15½	15–58	½–1
	48–62	10–17	18–40	11½–18	15–40	½–1
Hogs:						
Neck and atlas	1–2	¼–1	30–60	12–16	23–29	¼–½
Back	1½–4	½–2	40–50	13–16	20–36	¼–½
Blade	1–3	¼–¾	20–30	11½–15	25–40	¾–1¼
Ham and picnic	8–12	1½–4	22–30	9–12	35–47	1–1½
	11½–21	2½–7¾	20–35	13–15	30–36	¼–1

The following summarizes the raw materials probably meeting existing fat and protein requirements.

Fed steers and heifers—Neck and atlas, all grades; Back (foreward portion or thoracic vertebrae) and ribs, low Good grade and below.

Cows—Neck and atlas, all grades; Back and Ribs, low Utility grade and below.

Barrows and gilts—Neck and atlas; Back; Blade.

Sows—Neck and atlas; Back (foreward portion or thoracic vertebrae).

Existing regulations make it impossible to use all potential raw materials from fed steers and heifers, upper grades of cows, and from barrows and gilts and sows.

Another factor determining the potential supply of MDM is the structure of meatpacking, meat processing, food manufacturing, and food distribution and the flow of products among firms. Not all meatpackers and processors are potential producers.

Potential producers of MDM are those firms which have as a byproduct of their operation a sufficient quantity of raw

[13] Field, *op. cit.* and several articles devoted to mechanically deboning in the *National Provisioner*, April 5, 1975, especially Robert P. Dudley, "Mechanical Deboning Is Exciting Breakthrough," p. 73.

materials suitable for mechanical deboning. MDM production will likely occur at or near the location where potential raw materials originate due to high transportation costs of moving bulky raw materials yielding a relatively low quantity of saleable MDM, and requiring proper refrigeration and sanitation (both at collection points and enroute).

Potential producers include beefpackers who also fabricate or bone carcasses, including boxed beef operations. Specialized slaughterers have too few raw materials to justify a mechanical deboner. Boxed beef operations utilize primarily feed steers and heifers and are potential producers only if regulations permit using raw materials from fed cattle. Even then, carcasses are cut differently and certain firms may have too few raw materials to mechanically debone. Firms boning cows are the most likely producers of relatively large volumes of MDB under existing regulations.

A second group of potential producers are central fabricating warehouses operated by retail food chains and institutional firms. These firms buy carcasses or primal beef and break them into subprimals or store-ready retail cuts. Many of these firms use fed steers and heifers so are primarily potential producers only if fed cattle raw materials can be utilized to produce MDB.

Most porkpackers also cut pork carcasses and do at least some processing (e.g. ham and bacon curing). These firms are potential producers along with whole hog sausage makers and specialty firms that buy specific primal cuts (bone-in) for pork items (e.g. purchasing heavy loins for Canadian bacon). Other specialty firms that buy bone-in primal or subprimal cuts of beef and pork in sufficient quantities may operate mechanical deboners.

Size of operation is important also in determining whether mechanical deboning machines will be operated. There are costs associated with buying the equipment, installing a complete system, hiring labor to operate and maintain it and having an effective quality control and sanitation program. Consequently, some minimum size of firm or minimum volume of raw materials must be available to economically operate a mechanically deboning system. Many state-inspected and some smaller federally inspected firms probably will not have enough volume to justify a machine.

Some potential suppliers of MDM will produce MDM for their own use in processed meat products while others will need a market outlet for it. For example, most beefpackers boxing beef do not process sausages and other processed meats. Consequently, they will need to sell MDM as an ingredient in other processors' consumer products. Whole hog sausage makers or other firms that process sausages and other processed meats as well as slaughter, break, or bone primals or carcasses, will utilize part or all of the product internally within their firm rather than marketing it as an ingredient.

Profit potential in the marketplace with or without restrictions plays an important role in determining potential MDM supplies. Potential supplying firms will expend the necessary resources to assemble a MDM processing system only if there is a sufficiently high profit potential.

The costs of producing MDM consists of two parts. First is the cost of raw materials. Second is the cost of producing MDM,. U.S.D.A.'s impact statement estimated operating costs at 20¢/lb. in 1978, and industry sources estimate current costs at 25–30¢/lb.

MDM production yields a wide range of potential profit depending on the type of raw material used and other factors. For example, the minimum and maximum wholesale price for pork neckbones between June 1979 and May 1980 was 8.5 and 19.5¢/lb., respectively. These high and low prices coincided with the high and low 80 percent pork trimmings prices in table 2. For this range of raw material prices, the breakeven price for MDP from pork neckbones corresponding to the low and high pork neckbones price with operating costs at 30¢/lb. is 38.5 and 49.5¢/lb., respectively. If the price of MDM is 60 and 80 percent of the 80 percent lean trimmings price, potential profit or loss at the minimum price point ranged from a profit of .5¢/lb. to a loss of 9.5¢/lb. Profit potential at the peak price point ranged from a loss of .5¢/lb. to a profit of 15.5¢/lb.

The required investment in a mechanically deboning system varies widely but is large enough to merit careful cost-benefit considerations. Equipment costs for the mechanical deboning machine alone range from $50,000–$200,000. Most machines require that larger-sized raw materials be pre-ground, which requires an additional $15–20,000 piece of equipment. Support equipment required for a continuous process MDM production system includes containers for raw materials, conveyers, tubing for pumping the MDM from the MDM machine to containers, containers for shipping MDM in fresh or frozen form, scales, freezer or refrigeration equipment, quality control laboratory, and sanitation equipment. An area within the plant of roughly 300 ft^2 with a 12 ft. clearance also is required for receiving raw materials, processing, freezing, refrigerating, etc. A complete system, including new building (addition to the existing plant) and equipment could cost $300,000–$500,000. Potential suppliers will not invest one-half million dollars in a system without strong expectation of adequate returns from this investment.

Based on a simplified analysis, profit potential exists. Maximum profit potential from pork neckbones when MDP was priced at 60 and 80 percent lean trimmig price was .5–15.5¢/lb. Survey respondents reported using their machines at 250–3000 pounds of MDM per hour. If a complete MDM system costs $400,000, operates at 1,250 pounds per hour, and returns 5¢/lb. profit, it would take 8 million pounds of MDM to pay for the equipment, requiring 800, 8-hour days or just over 3 years. A higher operating volume and higher profit per unit reduces the payback period and vice versa.

Survey respondents indicated a complete MDM processing system requires 1–6 new employees, depending on a given firm's layout of the system, type of equipment, operating volume, and other factors. New employees may include: 1 person to move raw materials to the grinder, 1 equipment operator, 1 person packaging and weighing MDM and moving product to its freezer/cooler room, and 1 supervisor. Additional labor requirements may include quality control, equipment maintenance, machinists, and sanitation personnel. Note that MDM processing results in new employment opportunities rather than replacing hand boners or other plant labor.

Current production of MDM is small due to regulations governing product labeling and fat and protein requirements. Assuming regulations were changed, the industry will require time to increase the supply of MDM from current levels.

Industry contacts indicate about 23 mechanically deboning machines are currently owned by potential MDM producers. Firms owning some machines have ceased using them and have "moth-balled" them until profit expectations improve. Some firms formerly producing MDM had leased equipment from manufacturers but have since allowed the lease to lapse. Only 3–5 firms are currently producing MDM on either a regular or sporadic basis.

These 3–5 firms are likely to rapidly increase production upon a modification of the labeling and fat and protein regulations. Their supply response will

depend on the time required to hire and train necessary labor, seek approval for labels for MDM, find customers, and have customers seek approval for final product labels. The task of finding customers and market penetration was discussed earlier. To increase production from current levels to the machine capacity for firms already producing MDM could take 2–4 months. Estimates are 6 months to 2 years for firms without machines. The estimated profit potential must be researched and evaluated, a decision made to purchase a specific machine, build or rearrange plant space for the equipment, install all necessary equipment and deboning machinery, bring equipment up to operating standards, approve product labels for MDM, find customers and have customers approve final product labels.

Growth in demand for MDM and the supply response to that increasing demand will occur concomitantly but will require time. The experience of mechanically deboned poultry is instructive. Mechanical deboning in the poultry industry began in the mid-1960's. However, it was not until the the early 1970's that quality control procedures were developed and there was a significant demand for the mechanically deboned poultry products in several consumer-accepted, final demand products. A similar experience could be expected with MDM though it likely would occur more rapidly because of the previous experiences of the poultry industry.

Given the above, what is the current and potential production of MDM? Any estimate of potential production is subject to error because of the many factors that influence the estimate. Data limitations complicate the estimation process.

Two sets of projected levels of MDM production are developed below based on 1979 cattle and hog slaughter.[14] The first set of projections assumes that all potential raw materials from federally inspected slaughter is used to produce MDM. The second set of projections recognizes that not all of the potential MDM raw materials will be utilized for the reasons discussed earlier. The potential impact of two alternative regulations are examined for both sets of production. These estimates are shown in Table 3.

The first column of Table 3 reflects MDM production under current regulations governing labeling and fat and protein parameters (policy A). Firms producing MDM report getting 10–12 pounds of MDB from cows and 3 pounds of MDP from sows. Few if any raw materials from fed steers and heifers and barrows and gilts were mechanically deboned in 1979. USDA reported 1.1 million pounds of MDB and 282,000 pounds of MDP in 1979, or a total of 1.4 million pounds of MDM.

Columns 2 and 3 of Table 3 show the estimated maximum potential production of MDM if all raw materials were used. Column 2 (policy B) relaxes the current labeling restrictions, however, the fat and protein restrictions are assumed to remain in effect. Fed steers and heifers grading Good or below (about 30 percent of all fed steers and heifers) can produce at least 4 pounds of MDB. Similarly, about 30 percent of cows are Canner and Cutter grade from which MDM can meet current fat and protein restrictions. Raw materials from barrow and gilts can produce at least 1 pound of MDP per carcass and sows are a potential source of at least 3 pounds of MDP per carcass. Estimated maxium potential production in 1979 of MDB could have increased to 47 million pounds, and MDP to 94 million pounds under policy B.

Policy C combines a change in labeling and a change in fat and protein restrictions. These estimates are shown in column 3. These estimates assume all MDM that could possibly have been produced in 1979, would have been produced. MDB output per carcass increases to 16 pounds for fed steers and heifers and to 12 pounds for cows as more raw materials are used because of no restrictions regarding fat and protein levels. Similarly, for hogs, MDP output per carcass increases to 5 pounds for barrows and gilts and to 7 pounds for sows. The number of animals from which raw materials can be derived increases also. In essence, all fed steers and heifers, cows, barrows and gilts, and sows could have been used to produce MDM. Estimated production in 1979 of MDB increased to 472 million pounds and to 432 million pounds for MDP under policy C. The estimated maximum potential supply of MDM in 1979 then was 904 million pounds.

The economic realities of the market place will dictate that less than 100 percent of possible raw materials will be used in MDM production. Not all raw materials that could have been mechanically deboned would have been utilized. Some firms would have an insufficient volume of raw materials because of their size or because of the normal flow of beef and pork from producers to consumers. Some cuts may have been more economical to merchandise to consumers as bone-in meat cuts also. Realistically then, the yield per carcass would be less than the maximum possible and the number of carcasses utilized would be fewer than potentially possible.

The final two columns of Table 3 present more realistic estimates of MDM production under policies B and C. These are the estimates of MDM production that are used in the following section of this report to estimate the impact of the current regulations.

The fourth column of Table 3 shows the more likely estimate of MDM output that may have occurred in 1979 if the product labeling regulation had been removed but the fat and protein restrictions had remained in effect. Not all carcasses from which MDM meeting fat and protein parameters can be produced would have been used as raw material, due to institutional and economic reasons. A more realistic estimate assumes 75 percent of federally inspected cow slaughter and 60 percent of each of the other classes of livestock eligible to be deboned would have been mechanically deboned.[15] The more likely level of MDB production in 1979 under policy B is estimated at 30.7 million pounds of MDB and 56.4 million pounds of MDP—a total of 87 million pounds.

The final column of Table 3 presents the estimated levels of MDM production used to estimate the economic value of MDM technology. These estimates assume that both the product labeling regulation and the fat and protein restrictions are removed. Approximately 60 percent of fed steers and heifer carcasses are marketed as boxed beef. It is assumed that the raw material from these animals would have been mechanically deboned at a yield of 10 pounds of MDB per carcass in 1979 had there been no restrictions on the fat and protein content of MDB. It is assumed that three-fourths of available cows and 60 percent of barrows and gilts, and sows would also have been used for producing MDM but at less than the maximum output per carcass. Thus, a

[14] Lamb and veal carcasses will also provide raw materials for MDM production. However, the production of these meats is small and is not considered here. Beef and pork account for over 96 percent of red meat supplies.

[15] These levels appear to be conservative based on discussions with industry representatives. The actual percentages can only be determined by observing how the market would have reacted. The key point is that production would have been less than the maximum possible. The interested reader can alter the estimate using whatever percentages are considered reasonable. Changes in the percentages will alter the dollar magnitude of the estimated social costs of current regulations developed in the following section. However, the conclusions about the social desirability of the regulations will not be affected by the magnitude of these percentages.

more realistic estimate of the supply of MDM in 1979 given no product labeling requirement (other than information about calcium content of the product) and no fat and protein restrictions is 351.7 million pounds—193.8 million pounds of MDB and 157.9 million pounds of MDP.

Table 3.—*Estimated MDB and MDP Production That Could Have Occurred Under Alternative Regulatory Policies, 1979*

Source of raw materials	Actual MDM production 1979 [1]	Projected production under alternative policy options: All possible raw materials used for MDM production — Policy option B [2]	Policy option C [3]	MDM production occurs only at the economically feasible level — Policy option B [2]	Policy option C [3]
	MDM production per carcass (pounds)				
Cattle:					
Fed steers and heifers	NA	4	16	4	10
Cows	10	10	12	10	10
Hogs:					
Barrows and gilts	NA	1	5	1	3
Sows	3	3	7	3	5
	Number of carcasses (1,000 head)				
Cattle:					
Fed steers and heifers	NA	7,611	25,370	4,567	15,222
Cows	114	1,664	5,546	1,248	4,160
Hogs:					
Barrows and gilts	NA	79,744	79,744	47,846	47,846
Sows	94	4,793	4,793	2,875	2,875
	Total MDM production (1,000 pounds)				
Cattle:					
Fed steers and heifers	NA	30,440	405,920	18,268	152,220
Cows	1,140	16,640	66,552	12,480	41,600
Total MDB	[4] 1,140	47,080	472,472	30,748	193,820
Hogs:					
Barrows and gilts	NA	79,744	398,720	47,846	143,538
Sows	282	14,379	33,551	8,625	14,375
Total MDP	282	94,123	432,271	56,471	157,913
Total MDM	[4] 1,422	141,203	904,743	87,219	351,733

[1] USDA Livestock, Meat, and Wool Market News Weekly Summary.
[2] Policy Option B is to remove product labeling requirements but retain the existing fat and protein restrictions.
[3] Policy Option C is to remove both the labeling requirements and the fat and protein restrictions.

Economic Impact of Current Regulations

Regulations affecting the production and use of a product such as MDM will generate economic benefits or costs (or both) depending on how the regulations alter the production and consumption of the product relative to what would have occurred in the absence of regulations. Thus, the process of evaluating the economic impact of regulations is to first determine the economic value of the technology in the absence of regulations and then determine how this value is altered by the presence of the regulations.

Economic Value of MDM Technology

The economic value of the MDM technology is illustrated in Figure 1. Each pound of MDM produced has a net economic value defined by the retail price of meat less the combined cost of raw materials and processing cost. The economic value of the MDM technology will vary from year to year depending on the number and type of animals slaughtered and the retail priced of beef and pork. However, the relationship between costs and benefits of the regulations will remain about the same each year. The economic impacts estimated in this analysis are based on 1979 data.

The estimates shown in Table 3 indicate, that given the level of cattle and hog slaughter, about 193 million pounds of MDB and 157 million pounds of MDP would likely have been produced in 1979 in the absence of regulations.[16]

This amounts to 0.9 and 1.0 percent increases in beef and pork supplies, respectively. Based on Ball's estimates of price flexibilities, this would have caused a (0.9)(1.537)=1.4 percent decline in retail beef prices and a (1.0)(1.549)=1.5 percent decline in retail pork prices, *ceteris paribus.*[17]

Reported annual average retail prices in 1979 were $2.26 per pound for beef and $1.44 per pound for pork.[18]

Therefore, if MDM production had been at the above projected levels, the retail price of beef would have been (.014)(2.26)=3.16 cents per pound lower and the retail price of pork would have been (0.15)(1.44)=2.16 cents per pound lower then the observed average prices for 1979.

Based on reported raw materials prices for 1979 and discussions with owners of mechanical deboning machinery it appears that the average cost of raw materials would be no more than 10 cents per pound of MDM and that processing costs would be no more than 30 cents per pound of MDM. Thus, the estimated net economic value of each pound of MDM that could have been profitably produced in 1979 is $2.23−.40=$1.83 per pound of MDB and $1.42−.40=$1.02 per pound of MDP. The potential economic value of the MDM technology for 1979 is therefore ($1.83)(193 million pounds)=$353 million for beef and ($1.02)(157 million pounds)=$160 million for pork, for a total of approximately $513 million.[19]

Economic Costs of MDM Regulations

Regulations affecting the production and use of a product such as MDM will generate economic costs (in addition to costs of program implementation) if production costs are increased or if output is restricted relative to what would occur in the absence of the regulation. The economic costs generated by the regulation will be equal to the increase in production costs plus the net economic value of the production foregone because of the effects of the regulation.

The current regulations have a small impact on costs of producing MDM, but a large impact on the potential supply. The costs of the regulation are generated because production of MDM was only 1.4 million pounds in 1979, rather than the estimated 351.7 million pounds that would have occurred in the absence of the regulation. The estimated costs of the regulation is thus the $513 million in net economic value of the technology that is not realized because of the existence of the regulations.[20]

[16] This is the amount of MDM that would have been economically feasible. As the data in Table 3 show, it would have been physically possible to produce considerably more MDM than this.
[17] This is a slight underestimate of the price change since cross price flexibilities have been ignored.
[18] *Livestock and Meat Situation,* May 1980.
[19] This is an underestimate of the net value of the technology. These calculations estimate the area DCBE in Figure 1. The total value of the technology is defined by the area DABE in Figure 1. Thus, the above calculations have understand the value of the technology by an amount equal to the area ABC in Figure 1.
[20] Since the current MDM production is not zero the cost of the regulations is something less than the total value of the technology. However, since current production is less than one half of one percent of projected production, the difference is ignored.

As noted earlier the current regulations can be partitioned into three areas: labeling restrictions, restrictions on amount of MDM in final product, and fat, protein, and calcium content restrictions. Each of these three areas of the regulations have a different potential impact on the production of MDM and thus, the potential social costs are different for each regulation.

The current labeling requirement for products containing MDM has been the limiting factor in determining how much MDM is produced. Thus, the entire economic cost of the current regulations can be attributed to the existence of this portion of the regulations. However, the entire amount of estimated $513 million in cost attributed to the regulation cannot be regained by simply removing the labeling regulation without also changing the regulation dealing with the fat and protein content of MDM.

Raw materials from several types of animals produce MDM that does not comply with the fat and protein requirements. Thus, removal of the final product labeling requirements without also modifying the fat and protein requirements for MDM would not permit the full value of the MDM technology to be produced.

The economic impact of the fat and protein requirements is illustrated graphically in Figure 2. The potential supply of MDM under alternative policies shown in Table 3 indicate that if the label restrictions were removed but the fat and protein restrictions remain in effect, the production of MDB would be about 30 million pounds and the production of MDP would be about 56 million pounds. This compares with 193.8 million pounds of MDB and 157.9 million pounds of MDP in the absence of any regulations. Based on the same price flexibility and MDM production estimates used earlier, the social cost associated with retaining the fat and protein restrictions while removing the labeling regulations would be $185.5 million for beef and $80 million for pork—a total of $365.5 million.[21] Thus, removing the labeling restrictions while keeping the protein and fat content restrictions would regain only 29 percent of the social costs generated by the current set of regulations.

There is no economic justification for placing fat and protein restrictions on an individual ingredient such as MDM when maximum fat content of the final product is already specified by other regulations. The fat content of an ingredient has little to do with the final fat content of the final product when the processor can mix ingredients to obtain the final product. For example, the maximum fat content of franks is 30 percent. The same maximum fat content applies to MDM, a potential ingredient in franks and weiners. Processed meat formulas (recipes) use meat ingredients with a fat content greater than 30 percent along with meat ingredients having a lower fat content (less than 30 percent) in proportions that keep the fat content of the final product below the 30 percent level (e.g., 10 lbs. of MDM with 50 percent fat + 40 lbs. of lean trimmings with 25 percent fat = 50 lbs. of final product with 30 percent fat).

Economic Benefit of Current Regulations

Regulations affecting the production and use of a product can generate economic benefits if the regulations result in any of the following conditions relative to what would be expected to occur in the absence of the regulation: (a) reduced consumption of an undesirable or harmful product, (b) expanded output of a useful product, (c) reduced production costs, or (d) improved flow of information for consumers and/or producers. The first step in identifying the benefits of the current regulations is to identify how the regulations improve upon the outcome that would be generated by the marketplace in the absence of the regulations.

The results of studies completed since the initial ban on MDM production indicate that there are no harmful effects of MDM consumption for the general populace.[22] One exception is for those individuals who must restrict their intake of calcium, a small portion of the population.

Since MDM contains relatively small amounts of calcium and the effect of the current regulations has been to keep MDM from being produced, the regulations have benefited those calcium sensitive consumers that might have consumed MDM in the absence of the regulations. However, the current regulations have the effect of protecting this small group of calcium sensitive consumers while denying the balance of the population access to a product that has no harmful effects on their health. A desirable alternative regulation would be one that enabled calcium sensitive consumers to avoid consumption of MDM if they wish, while not restricting its availability to other consumers.

Required inclusion of information about the calcium content of the final meat product is a regulation that appears to meet this condition. Calcium sensitive consumers can be expected to read all product ingredient labels and could thus avoid unacceptable levels of calcium intake. Hence, inclusion of information about calcium content in the ingredient label should generate the same benefits but avoid the economic costs generated by the current regulations.

It has been pointed out that MDM may change the taste and/or texture of some processed meat products if the product recipe is altered to include too high a proportion of MDM. This is presumably at least part of the reason for the regulation restricting MDM to not more than 20 percent of the meat ingredient in final products. However, regulations to protect the consumer from unacceptable changes in product quality are unnecessary. The rigors of the marketplace will enable the consumers to protect themselves from such changes.

The success of a processed meat product in the marketplace depends on repeat purchasers of satisfied customers. Numerous substitute products are available to these consumers. Reduced product quality as viewed by customers will result in declining sales unless there is a compensating decline in price. Hence, food processors have no incentive to increase the MDM content of a product to a point that reduces the consumer's image of the product. Recipes will contain no more than this acceptable level of MDM whether or not regulations impose an upper limit on MDM content. However, the existence of such regulations precludes the development of new products containing more than 20 percent MDM that might be quite acceptable to consumers. Such a regulation for example would have precluded the development of poultry franks—a product that consumers aparently find quite acceptable.

No economic benefits have been generated by the current regulations by expanding output of a useful product or by reducing costs. Rather, the regulations have had the effect of restricting output of MDM and thus

[21] Under this assumption the production of MDM would have increased the supplies of beef and pork 0.141 percent and 0.366 percent, respectively. This would have reduced beef prices by (.141)(1.537) = .217 percent and pork prices by (.366)(1.549) = .567 percent. Thus the retail price of beef would have been $2.25 per pound and the price of pork would have been $1.43. The value of the MDM technology with the existence of only the fat and protein restrictions would therefore be (2.25)(30 million pounds) = $67.5 million for beef and (1.43)(56 million pounds) = $80 million for pork. Hence the social cost of this regulation is $513 million − $147.5 million = $365.5 million.

[22] U.S. Department of Agriculture, *Health and Safety Aspects of the Use of Mechanically Deboned Meat: Final Report and Recommendations, Select Panel*, Washington, D.C.; Food Safety and Quality Service, August 1977.

keeping costs of ingredients in processed meats higher than would have occurred in the absence of the regulation. Similarly, the regulations have not reduced production costs and hence no benefits have been generated in this area. The final area of potential benefits noted above is improved information flow. Since MDM has not been produced under the regulation no benefits have been generated by improved information.

Comparison of Costs and Benefits

The estimated social costs generated by the current MDM regulations is approximately $513 million in 1979. The regulations can be said to have generated benefits to a small group of calcium sensitive consumers who might have consumed MDM in the absence of the regulation. No effort was made to estimate the magnitude of these benefits. Therefore, it is not possible to compare the costs and benefits of existing regulations. However, an alternative regulation was discussed that is preferable to the existing regulation because it avoids generating the $513 million in social costs, yet generates the same economic benefits as the current regulation.

Potential Impacts of MDM Technology on Livestock Prices

The use of MDM technology both increases and decreases the value of beef and pork carcasses. The value of a carcass is increased by recovering several pounds of edible MDM that would otherwise be sold as inedible byproducts. However, widespread of MDM technology will increase total meat supplies and hence reduce the price of meat, *ceteris paribus*. Thus, the net impact of MDM technology on the value of a carcass (and therefore the value of livestock) depends on the relative magnitude of these two impacts as illustrated below.

The following equation defines the net farm value of 100 pounds of carcass if the MDM technology is not used

$$V_o = W^o_m P^o_m + W^o_b P^o_b - C_o$$

Where:

V_o = net farm value of 100 pounds of carcass if MDM technology is not used ($/cwt)

W^o_m = pounds of edible meat obtained per 100 pounds of carcass if MDM is not used

P^o_m = retail price of meat ($ per pound) if MDM technology is not used

W^o_b = pounds of raw materials and other inedible byproducts obtained per 100 pounds of carcass if MDM technology is not used

P_b = price of raw materials ($ per pound) and other inedible byproducts[23]

C_o = cost of processing and delivering W^o_m pounds of edible meat per 100 pounds of carcass.

The net farm value of 100 pounds of carcass if the MDM technology is used is defined by the following equation.

$$V_1 = (W^o_m + \Delta W)P^1_m + (W^o_b - \Delta W) P_b - C_o - \Delta W C_d$$

Where:

W^o_m, W^o_b, C_o are defined above

P^1_m = retail price of meat ($ per pound) if MDM technology is used

ΔW = additional pounds of meat recovered per 100 pounds of carcass as a result of using MDM technology

C_d = cost per pound of MDM of owning and operating the MDM machinery

The net impact on the net farm value of 100 pounds of carcass of introducing the MDM technology is found by subtracting V_o from V_1.

$$D = V_1 - V_o = [(W^o_m + \Delta W)P^1_m + (W^o_b - \Delta W)P_b - C_o - \Delta W C_d] - [W^o_m P^o_m + W^o_b P_b - C_o]$$

$$D = W^o_m(P^1_m - P^o_m) + W^o_b (P_b - P_b) + \Delta W(P^1_m - P_b - C_d)$$

$$D = [W^o_m(P^1_m - P^o_m)] + [\Delta W (P^1_m - P_b - C_d)]$$

The first term of D reflects the decrease in the net farm value of the carcass because of the reduced price of meat as a result of using the MDM technology. The second term shows the increased value generated from recovering and selling ΔW additional pounds of meat that would otherwise have been sold as inedible byproduct.

The above expression can be simplified further by using the following definitions and relationships.

Let $\Delta P = [P^1_m - P^o_m$ and hence $P^1_m = P^o_m + \Delta P$. By definition

$$\Delta P = \frac{\Delta W}{W} \cdot \eta \cdot P^o_m$$

Where $\eta < 0$ is the price flexibility of the price of meat with respect to the quantity of meat. Moreover, since $\Delta P < 0$, $P_b > 0$, and $C_d > 0$ it follows that $P^o_m + \Delta P - P_b - C_d = kP^o_m$ where $0 < k < 1$. Therefore,

$$D = W^o_m \left[\frac{\Delta W}{W_m} \eta P^o_m\right] + \Delta W[kP^o_m]$$

$$D = \Delta W P_m(\eta + k)$$

Since $\eta < 0$ and $0 < k < 1$ it is clear that

$D = 0$ if $\eta = k$
$D < 0$ if $\eta > k$
$D > 0$ if $\eta < k$

The most recently published estimate of η_{pm} is -1.537 for beef and -1.549 for pork. Most other published estimates also indicate $\eta > 1$. Therefore, the widespread use of MDM technology will decrease the net farm value of carcasses, *cetcris paribus*.

However, the price impact of per pound of live weight is small. Based on the expected utilization rate of MDM technology shown in Table 3, ΔW for beef will be approximately 0.9 pound. Thus based on the 1979 average retail beef price of $2.26 per pound and $\eta = -1.5$, $\Delta P = (0.9)(-1.5)(2.26) = -.0305$. As noted earlier P_b .10 and C_d .30. Therefore, the estimated value of k for 1979 is

$$k = \frac{2.26 - .0305 - .10 - .30}{2.26} = \frac{1.8295}{2.26} = .810.$$

The estimated value of D for beef in 1979 is then

$D = (0.9)(2.26)(-1.5 + .81)$
$D = 1.40$

In other words, if MDM technology had been used in 1979 to produce 0.9 pounds of MDM per 100 pounds of beef carcass the net farm value of beef carcasses, would have been reduced by $1.40 per hundredweight. Based on USDA marketing margin calculations, an average of 163 pounds of live beef animal is required to produce 100 pounds of carcass.[24] Thus, the impact of using MDM technology at the projected level of 193 million pounds of MDM production in 1979 would have reduced live cattle prices by approximately

$$\frac{1.40}{163} = \$0.0086 \text{ per pound.}$$

In the case of pork ΔW is estimated to be 1.0 pound, $\eta = -1.549$, and $P^o_m = \$1.44$. Therefore,

$\Delta P = (1.0)(-1.549)(1.44) = -.0223$.

and

$$k = \frac{1.44 - .0223 - .10 - .30}{1.44} = \frac{1.018}{1.44} = .71$$

[23] The price of raw materials is assumed to be the same whether or not MDM technology is used. Widespread use of MDM technology should increase P_b as the amount of this product sold is reduced. However, the magnitude of this impact would likely be quite small and is ignored for purposes of this discussion.

[24] Duwer, L. A. "Changes in Price Spread Measurements for Beef and Pork", *Livestock and Meat Situation*, August, 1978, pp. 33–37.

The estimated value of D for pork in 1979 is then

$$D=(1.0)(1.44)(-1.549+.71)$$
$$D=1.21$$

If MDM production from pork carcasses in 1979 had been 157 million pounds, the average net farm value of hog carcasses would have declined by $1.21 per hundredweight. Since it takes 161 pounds of live hog to produce 100 pounds of pork, this level of MDM production would have reduced live hog prices by approximately

$$\frac{\$1.21}{161}=\$.0075 \text{ per pound.}$$

Conclusions and Observations

Current MDM regulations generate social costs in the neighborhood of $513 million per year. Benefits generated by the regulations are limited to a small segment of the population who must restrict their intake of calcium. An alternative regulation requiring the product label to contain information about the calcium content would generate the same benefits as the current regulations without generating social costs associated with those regulations.

The foregoing analysis indicates that the following changes in MDM regulations would be in the public interest.

1. Revise product labeling requirements so that labels do not impede sales of MDM. The revised label probably should include information about the calcium content of the final product for calcium sensitive consumers. This modified labeling regulation would generate the same social benefits but avoid the social costs of the current regulations.

2. Removal of the current regulations regarding fat, protein, and calcium contents of MDM. Existing regulations insure that meat products such as franks and weiners will not exceed specified fat levels. Establishing upper limits on the fat content of MDM provides the consumer with no more protection than existing regulations. Therefore, current regulations prevent processors from making efficient use of existing resources. The fat restriction will prevent a large portion of the potential raw material from being used in MDM production. The above analysis indicates that modification of the product labeling regulations without also removing the fat restrictions would remove less than 30 percent of the social costs associated with the current regulations.

3. The current regulation limiting the content of MDM in final products to no more than 20 percent of the meat ingredients does not appear to be generating social costs at the present time. However, there is no economic justification for this type of regulation. The success of a processed meat product in the marketplace depends on repeat purchases of satisfied customers. The rigors of the marketplace will weed out products that contain too much MDM to satisfy consumers. While this regulation is not generating social costs at the present time, it might do so in the future. Continuation of the 20 percent limit on MDM content would preclude development of potential new products that might be quite acceptable to consumers. Hence, the public interest would be served by removing this regulation.

The foregoing analysis has identified the nature of the economic costs and benefits associated with the current MDM regulations. The analysis also estimated the magnitude of the social costs generated by these regulations.

Measurement of social costs of regulations is inherently imprecise. Fortunately, the above conclusions and recommendations do not depend on perfectly accurate measures of the costs and benefits associated with the regulations. The same conclusions would hold even if the estimated social costs were only a fraction of those developed here. Namely, the benefits associated with the current regulations can be captured by a less restrictive labeling regulation. The current regulations establishing limits on the MDM content in final products and the maximum fat content of MDM provide the consumer no more protection than is already available through existing regulations and through the economic realities of the marketplace. Moreover, these regulations impede the efficient use of resources and generate social costs without generating social benefits. Social welfare would be improved by eliminating these regulations.

Meat and Meat Food Products Proceeded and Canned — *Fiscal Year October 1, 1979 to September 30, 1980*

			Pounds
1977	0		
1978	no pork		0
	Mechanically Beef	Processed	367,620
	Mechanically Other	Processed	61,400
1979	Mechanically Beef	Processed	1,108,641
	Mechanically Pork	Processed	268,773
	Mechanically Other	Processed	930,250
1980	Mechanically Beef	Processed	969,000
	Mechanically Pork	Processed	160,921
	Mechanically Other	Processed	955,502

[FR Doc. 81-21984 Filed 7-30-81; 8:45 am]
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federal register

Friday
July 31, 1981

Part III

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.

District of Columbia: DC81-3040	June 5, 1981.
Hawaii: HI81-5106	Mar. 6, 1981.
Illinois:	
IL79-2027	May 4, 1979.
IL79-2076	Sept. 14, 1979.
Maryland: DC81-3040	June 5, 1981.
Montana:	
MT81-5114	May 8, 1981.
MT81-5115	May 8, 1981.
MT81-5116	May 8, 1981.
Pennsylvania:	
PA80-3025	Apr. 11, 1980.
PA80-3026	Apr. 11, 1980.
PA80-3028	Apr. 11, 1980.
PA80-3027	Apr. 18, 1980.
PA80-3029	Apr. 25, 1980.
PA80-3032	May 30, 1980.
PA80-3044	July 25, 1980.
PA80-3031	Aug. 29, 1980.
PA80-3037	May 2, 1980.
PA80-3038	May 23, 1980.
PA80-3060	Oct. 10, 1980.
PA80-3075	Dec. 5, 1980.
Washington: WA81-5126	July 6, 1981.

Supersedeas Decisions to General Wage Determination Decision

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: AL80-1042(AL81-1273) ..... Jan. 4, 1980.
Colorado:
CO80-5137(CO81-5133) ..... Oct. 24, 1980.
CO80-5138(CO81-5134) ..... Oct. 24, 1980.
CO80-5139(CO81-5135) ..... Oct. 24, 1980.
CO80-5140(CO81-5137) ..... Oct. 24, 1980.
Illinois: IL79-2062(IL81-2049) ..... July 6, 1979.
Indiana: IL79-2062(IL81-2049) ..... July 6, 1979.
Kentucky: KY79-1166(KY81-1274) ..... Dec. 14, 1979.
Michigan: IL79-2062(IL81-2049) ..... July 6, 1979.
Minnesota: IL79-2062(IL81-2049) ..... July 6, 1979.
New York: IL79-2062(IL81-2049) ..... July 6, 1979.
Ohio: IL79-2062(IL81-2049) ..... July 6, 1979.
Pennsylvania: IL79-2062(IL81-2049) ..... July 6, 1979.
Wisconsin: IL79-2062(IL81-2049) ..... July 6, 1979.

Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C., this 24th day of July 1981.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

Modification Page 1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NUMBER HI81-5106 Mod. # 6 (46 FR 15650 - March 6, 1981)					
STATEWIDE, HAWAII					
OMIT:					
Laborers Group 1-H (Landscape and Irrigation Laborer)	$ 8.61	$1.09	$1.56	$ .60	$ .08
ADD:					
Laborers Landscape and Irrigation Laborers					
Group 1	7.75	1.09	.80	.60	
Group 2	7.25	1.09	.80	.60	
Group 3	5.50	1.09	.80	.60	

Modification Page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IL79-2027 - Mod. #5 (44 FR 26413 - May 4, 1979) Adams, Brown, & Pike Counties, Illinois					
Change:					
Laborers:					
Adams Co.:					
Unskilled	$12.69	.55	.60		.05
Semi-Skilled	12.89	.55	.60		.05
Skilled	13.04	.55	.60		.05
Brown & Pike Cos.:					
Unskilled	12.74	.65	.45		.05
Semi-Skilled	12.94	.65	.45		.05
Skilled	13.09	.65	.45		.05
DECISION NO. IL79-2076 - Mod. #7 (44 FR 53638 - September 14, 1979) Adams, Brown, Cass, Christian, Logan, Mason, Menard, Morgan, Pike, Sangamon, Schuyler, & Scott Counties, Illinois					
Change:					
Laborers:					
Adams Co.:					
Unskilled	13.11	.55	.60		.05
Semi-Skilled	13.31	.55	.60		.05
Skilled	13.46	.55	.60		.05
Brown, Cass, Mason, Morgan, Pike, Schuyler, & Scott Cos.:					
Unskilled	13.16	.65	.45		.05
Semi-Skilled	13.36	.65	.45		05
Skilled	13.51	.65	.45		.05
Christian Co.:					
Unskilled	12.71	.65	.90		.05
Semi-Skilled	12.91	.65	.90		.05
Skilled	13.06	.65	.90		.05
Logan & Menard (S ½ of Co.) Cos.:					
Unskilled	13.21	.65	.40		.05
Semi-Skilled	13.41	.65	.40		.05
Skilled	13.56	.65	.40		.05
Menard (N ½ of Co.) & Sangamon Cos.:					
Unskilled	12.71	.65	.90		.05
Semi-Skilled	12.91	.65	.90		.05
Skilled	13.06	.65	.90		.05

DECISION NUMBER MT81-5114 Mod. #6
(46 FR 25925 - May 8, 1981)

STATEWIDE, MONTANA	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Boilermakers	$14.97	$1.375	$1.15		$.05
Ironworkers					
Area 1	14.15	1.05	1.60		.15
Area 3	14.41	1.05	1.60		.15

DECISION NUMBER MT81-5115 Mod. #6
(46 FR 25934 - May 8, 1981)

STATEWIDE, MONTANA	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Boilermakers	$14.97	$1.375	$1.15		$.05
Ironworkers					
Area 1	14.15	1.05	1.60		.15
Area 3	14.41	1.05	1.60		.15

DECISION NUMBER MT81-5116 Mod. #5
(46 FR 25953 - May 8, 1981)

Cascade, Deer Lodge, Gallatin, Glacier, Hill, Missoula, Silver Bow, and Valley Counties, Montana	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
OMIT:					
Ironworkers					
Structural; Ornamental and Reinforcing:					
Area 2 (Only Cascade, Hill, and Valley Cos.)					
ADD:					
Ironworkers					
Structural; Ornamental and Reinforcing:					
Area 3 (Cascade, Hill, and Valley Counties)	$14.41	$1.05	$1.60		$.15
CHANGE:					
Boilermakers	14.97	1.375	1.15		.05
Ironworkers					
Structural; Ornamental and Reinforcing:					
Area 2	14.15	1.05	1.60		.15

Modification Page 5

DECISION NO. PA80-3025
MOD. NO. 10
(45 FR 25015 - April 11, 1980)
Adams & York Counties, Pa.

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BUILDING, HEAVY & HIGHWAY CONSTRUCTION					
Bricklayers & Stonemasons	$11.05	.65	.45		
Carpenters, Building					
Adams County	12.72	.70	.90		.05
York County	11.49	.85	.55		.03
Ironworkers	14.265	1.49	1.46		.045
LABORERS:					
General laborers	8.10	.50	.77		
Operator of jackhammer (etc.)	8.30	.50	.77		
Wagon drill operator	8.40	.50	.77		
Handling of all material (etc.)	8.35	.50	.77		
Laborers assisting tile (etc.)	8.15	.50	.77		
Handling & using dynamite	8.43	.50	.77		
Caisson work (top men)	8.35	.50	.77		
Caisson work (bottom men)	8.55	.50	.77		
Mixer man	8.50	.50	.77		
Millwrights:					
York County	11.99	.85	.55		.03
Marble, Tile & Terrazzo Workers	9.84	.65	.55		
Piledrivermen, Building	12.97	3.13	1.40	c	.13
Plumbers	13.30	1.02	1.00		.11
Steamfitters	13.30	1.02	1.00		.11
Soft Floor Layers:					
York County	11.49	.85	.55		.03

Modification Page 6

DECISION NO. PA80-3026
MOD. NO. 8
(45 FR 25017 - April 11, 1980)
Lehigh County, Pennsylvania

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BUILDING, HEAVY & HIGHWAY CONSTRUCTION					
Bricklayers	$12.55	1.00	1.25		.01
Cement Masons	13.38	1.10	.50		
Electricians	13.25	.70	3%+.80		.04
LABORERS, BUILDING CONSTRUCTION:					
Laborers & window cleaners	9.34	.62	.59		
Operator of jackhammer, paving breaking and other pneumatic and mechanical tools coming under the jurisdiction of laborers, laying all clay terra cotta, ironstone, vitrified concrete or non metallic pipe and the making of joints for same and cofferdams(below 10')	9.59	.62	.59		
Wagon drills and men handling burning torches in the wrecking of buildings	10.09	.62	.59		
Plaster and mason tenders, scaffold builders and handling of all material to be used by plasterers and masons, brick and block loaded on pallets, cement finisher tenders, gunniting and molded-D and sandblaster helpers, power buggies, all floor hardner and "cure" application shall be work of the mason tender, all pumps such as the concrete, plaster mortar and water, installing plastic or other non-solid refractory materials in connection with the boiler work	9.84	.62	.59		
Barko Tamper Operator	10.30	.62	.59		
Marble Setters	11.60	1.10	1.50		.01
Plasterers	13.33	1.00	.50		.14
Plumbers	15.33	.85	1.40		
Soft Floor Layers	10.55	.64	.72	.65	

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DECISION NO. PA80-3026 MOD. NO. 8, CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sprinkler Fitters	$15.56	.95	1.40		.08
Piledrivermen, Building	12.97	3.13	1.40	d	.13
Steamfitters	14.36	.95	2.05		.11
Stonemasons	12.55	1.00	1.25		.01
Terrazzo workers	11.85	1.10	1.50		
Tile Setters	11.60	1.10	1.50		
DECISION NO. PA80-3028 MOD. NO. 8 (45 FR 25019 - April 11, 1980) Berks County, Pennsylvania					
CHANGE: BUILDING, HEAVY & HIGHWAY CONSTRUCTION					
Bricklayers & Stonemasons	$12.15	1.25	1.00		
Carpenters, Building	14.00	1.07	.95		
Electricians: Herford, Longswamp & Washington Twps., portion of Maxatawney, Twp., east of Sacony Creek	13.25	.70	3%+.80		.04
Millwrights	14.52	1.07	.95		
Painters: Brush	10.05	1.10	1.00		
Bridge, Tower, Stacks, and Tanks	12.50	1.10	1.00		
Spray & Steel	12.10	1.10	1.00		
Piledrivermen, Building	12.97	3.13	1.40	e	.13
Plumbers	15.08	1.10	1.40		.14
Steamfitters	15.01	.95	2.05		.11
Sprinkler Fitters	15.56	.95	1.40		.08
Soft Floor Layers	14.00	1.07	.95		

DECISION NO. PA80-3027 MOD. NO. 9 (45 FR 26654 - April 18, 1980) Schuylkill County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE: BUILDING, HEAVY, HIGHWAY CONSTRUCTION:					
Bricklayers & Stonemasons	$11.60	.70	1.45		
Carpenters, Building	12.72	.70	.90		.05
Cement Masons	11.60	.70	1.45		
Electricians: North Manheim, South Manheim, West Brunswick, Wayne, Washington, Pottsville, Schuylkill Haven Twps.	13.39	.78	3%+.30		.03
Pine Grove & Tremont Twps.	12.34	.65	3%+.67		1/4 of 1%
North Union, East Union, West Mahony, (excluding Frackville Bourough), Mahony, Delano, Line, Rush, Ryan, Blythe, Schuylkill, Walker Rahn, East Brunswick and West Penn. Twps	13.27	.65	3%+1.00	a	.05
Remainder of County	13.65	.60	3%+.40		.05
LABORERS: Building Unskilled laborers & window cleaners	8.10	.50	.50		
Operator of jackhammer, paving breaking & other pneumatic, electric & mechanical tools, laying of clay, terra cotta, ironstone, virtified concrete or non-metallic pipe & the making of joints for same, wagon drill operators, cofferdams (below 10'), tunnel free air handling & using cutting or burning torches in the wrecking of buildings, blasters, plasterer-tenders, mason tenders, scaffold builders and removal of power buggies	8.25	.50	.50		

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DECISION NO. PA80-3027
MOD. NO. 9, CON'T.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Lathers	$12.72	.70	.90		.05
Marble & Terrazzo Workers	10.60	.70	1.45		
Painters:					
Townships of North Union, East Union, Union, Mahony, West Mahony, Butler, Kline, Delano, Ryan, Rush, Rahn, West Penn., and city of Tamaqua					
Brush	10.85	.75	.60		.10
Tapers	11.51	.75	.60		.10
Hazardous	12.51	.75	.60		.10
Piledrivermen, Building	12.97	3.13	1.40	d	.13
Tile Setters	10.60	.70	1.45		
Soft Floor Layers	10.98	.70	.90		.05
Sprinkler Fitters	15.56	.95	1.40		.08

DECISION NO. PA80-3029
MOD. NO. 10
(45 FR 28069 - April 25, 1980)
Lebanon County, Pennsylvania

CHANGE:
BUILDING, HEAVY, HIGHWAY CONSTRUCTION:

Ironworkers	$14.265	1.49	1.46		.045
Painters:					
East of Route 72					
Brush	11.05	1.10	1.00		
Structural Steel & Spray	12.10	1.10	1.00		
Highway & Bridge	12.50	1.10	1.00		
Piledrivermen, Building	12.97	3.13	1.40	d	.13
Plumbers:					
West of Route 501	13.30	1.02	1.00		.11
Steamfitters:					
West of Route 501	13.30	1.02	1.00		.11

Modification Page 10

DECISION NO. PA80-3032
MOD. NO. 8
(45 FR 36767 - May 30, 1980)
Columbia, Montour & Snyder Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BUILDING, HEAVY & HIGHWAY CONSTRUCTION					
Bricklayers & Stonemasons:					
Zone I	$12.25	.55	.80		
Zone II	12.15	.55	.70		.01
Carpenters, Building	12.72	.70	.90		.05
Cement Masons:					
Zone I	12.45				.01
Zone II	11.85	.55	.70		.01
Electricians					
Zone I	13.65	.60	3%+.40		.05
Zone II	13.27	.65	3%+1.00	a	.05
Zone III	13.56	.65	3%+.67		1/4%
Ironworkers					
Zone I	14.265	1.49	1.46		.045
Laborers, Building					
Zone II					
Class I	8.35	.70	.60		
Class II	8.50	.70	.60		
Zone III					
Class I	9.45	.60	.73		
Class II	9.92	.60	.73		
Class III	8.85	.60	.73		
Class IV	9.72	.60	.73		
Lathers					
Zone I	12.72	.70	.90		.05
Zone III	12.72	.70	.90		.05
Line Construction					
Lineman, dynamite man, heavy equipment operator	13.37	.55	3%		3/8%
Winch truck operator	9.38	.55	3%		3/8%
Groundman	8.97	.55	3%		3/8%
Painters					
Brush	10.85	.75	.60		.10
Tapers	11.51	.75	.60		.10
Hazardous	12.51	.75	.60		.10
Piledrivermen, Building	12.97	3.13	1.40	d	.13

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DECISION NO. PA80-3032 MOD. NO. 8 CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Plasterers					
Zone I	$11.85	.55	.70		.01
Zone II	12.45				
Plumbers & Steamfitters	13.30	1.02	1.00		.11
Soft Floor Layers	10.98	.70	.90		.05
Sprinkler Fitters	15.56	.95	1.40		.08
DECISION NO. PA80-3044 MOD. NO. 8 (45 FR 49639 - July 25, 1980) Northumberland County, Pennsylvania					
CHANGE: Building, Heavy & Highway Construction:					
Painters:					
Brush	$10.85	.75	.60		.10
Tapers	11.51	.75	.60		.10
Hazardous	12.51	.75	.60		.10
Sprinkler Fitters	15.56	.95	1.40		.08
DECISION NO. PA80-3031 MOD. NO. 7 (45 FR 59747 - August 29, 1980) Bradford, Tioga & Union Counties, Pennsylvania					
CHANGE: BUILDING, HEAVY & HIGHWAY CONSTRUCTION					
Painters:					
Brush	$10.85	.75	.60		.10
Tapers	11.51	.75	.60		.10
Hazardous	12.51	.75	.60		.10

DECISION NO. PA80-3037 MOD. NO. 8 (45 FR 29522 - May 2, 1980) Sullivan County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE: BUILDING, HEAVY & HIGHWAY CONSTRUCTION					
CHANGE:					
Bricklayers	$12.15	.55	.70		.01
Carpenters, Building Remainder of County	12.72	.70	.90		.05
Cement Masons	11.10				
Electricians:					
Western part of County	11.50	.65	3%+1.00	1.00	.02
Laborers, Building Construction:					
Unskilled & Window Washers	10.87	.80	1.10		
Mason tenders incl. scaffold builders	11.27	.80	1.10		
Semi-skilled: Pneumatic electrical & mechanical tool ops., under the jurisdiction of the laborers - 2" pump-non-metallic pipelaying & making of joints clay, terra cotta, ironstone, vitrified concrete, handling of burning torches, asphalt or other hot materials, cement finishers & blaster helpers, power buggies, walk along hoist	11.37	.80	1.10		
Plasters tenders, blasters & wagon drill operators	11.19	.80	1.10		
Line Construction:					
Linemen & cable splicer	13.37	.55	3%		3/8%
Winch truck operator	9.38	.55	3%		3/8%
Groundman	8.97	.55	3%		3/8%
Painters:					
Brush	10.85	.75	.60		.10
Tapers	11.51	.75	.60		.10
Hazardous	12.51	.75	.60		.10
Soft Floor Layers	10.98	.70	.90		.05
Sprinkler Fitters	15.56	.95	1.40		.08
Stone Masons	12.15	.55	.70		.01

DECISION NO. PA80-3038
MOD. NO. 8
(45 FR 35148 - May 23, 1980)
Lancaster County,
Pennsylvania

CHANGE
BUILDING, HEAVY & HIGHWAY CONSTRUCTION:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
Bricklayers	$11.05	.65	.55		
Ironworkers	14.265	1.49	1.46		.045
Laborers: Building					
General Laborers	8.10	.50	.77		
Operators of Jackhammer	8.30	.50	.77		
Wagon Drill	8.40	.50	.77		
Handling of all materials	8.35	.50	.77		
Laborers assisting tile	8.15	.50	.77		
Handling & using dynamite	8.43	.50	.77		
Caisson Work (Top Men)	8.35	.50	.77		
Caisson Work (Bottom Men)	8.55	.50	.77		
Mixer Man	8.50	.50	.77		
Marble Setters	9.84	.65	.55		
Painters:					
Remainder of County:					
Brush	11.05	1.10	1.00		
Steel	12.10	1.10	1.00		
Spray	12.10	1.10	1.00		
Roller	11.05	1.10	1.00		
Piledrivermen, Building	12.97	3.13	1.40	d	.13
Plumbers	13.30	1.02	1.00		.11
Steamfitters	13.30	1.02	1.00		.11
Terrazzo Workers	9.84	.65	.55		
Tile Setters	9.84	.65	.55		
Stone Masons	11.05	.65	.55		

DECISION NO. PA80-3060
MOD. NO. 5
(45 FR 67531 - October 10, 1980)
Lycoming County, Pennsylvania

CHANGE:
BUILDING, HEAVY, HIGHWAY CONSTRUCTION:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
Bricklayers & Stonemasons	$11.55	1.15	.90		.015
Carpenters, Building	12.72	.70	.90		.05
Cement Masons	11.10				
Electricians	11.50	.65	3%+1.00	1.00	.02
Ironworkers	14.265	1.49	1.46		.045
Laborers; Building Construction:					
General Laborers	8.35	.70	.60		
Operator of Jackhammer, paving and other pneumatic electrical and mechanical tools, laying of all clay, terra cotta, ironstone, vitrified concrete or non-metallic pipe and the making of joints for same, wagon drill operator, cofferdam (below 10'), tunnel free air, handling and using cutting or burning torches in the wrecking of buildings, blasters, plasterer tenders, mason tenders, scaffold builders and removal of power buggies	8.50	.70	.60		
Lathers	12.72	.70	.90		.05
Painters:					
Brush	10.85	.75	.60		.10
Tapers	11.51	.75	.60		.10
Hazardous	12.51	.75	.60		.10
Piledrivermen, Building	12.97	3.13	1.40	d	.13
Soft Floor Layers	10.98	.70	.90		.05
Sprinkler Fitters	15.56	.95	1.40		.08

DECISION NO. PA80-3075 MOD. NO. 4 (45 FR 80638 - December 5, 1980) Northampton County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
CHANGE:					
BUILDING, HEAVY & HIGHWAY CONSTRUCTION:					
Bricklayers & Stonemasons	$13.70	.60	.75		.01
Cement Masons	13.60	.60	.75		.01
Electricians:					
Allen, Hanover, Lehigh, Bath, Freemansburg, Hellertown and Bethlehem	13.25	.70	3%+.60		.04
Remainder of County	14.25	.998	3%+1.00		.02
LABORERS: Building					
Laborers & Window Cleaners	9.34	.62	.59		
Operator of jackhammer, paving breaking and other pneumatic and mechanical tools coming under the jurisdiction of laborers, laying of all clay, terra cotta, ironstone, vitrified concrete or non-metallic pipe and making of joints for the same and cofferdams (below 10')	9.59	.62	.59		
Wagon drills and men handling burning torches in the wrecking of buildings	10.09	.62	.59		
Plaster and mason tenders, scaffold builders and handling of all materials to be used by plasterers and masons, brick and block loaded on pallets, cement finisher tenders, gunniting and molded-D and sandblaster helpers, power buggies, all floor hardner and "cure" application shall be the work of the mason tender, all pump such as concrete, plasterer, mortar and water, installing plastic					

DECISION NO. PA80-3075 MOD. NO. 4, CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
LABORERS (CONT'D)					
or other non-solid refactory materials in connection with the boiler work	$9.84	.62	.59		
Barko Tamper Operator	10.36	.62	.59		
Plumbers	15.33	.85	1.40		.14
Plasterers	13.49	.60	.75		.01
Piledrivermen, Building	12.97	.95	1.40	a	.08
Terrazzo Workers	13.90	.60	.75		.01
Steamfitters	15.36	.80	1.45		.11
Sprinkler Fitters	15.56	.95	1.40		.08
Truck Drivers, Building					
Class I	11.07				
Class II	11.14				
Class III	11.63				
DECISION NO. WA81-5126 - Mod #2 (46 FR 35029 - July 6, 1981) Statewide Washington					
CHANGE:					
BRICKLAYERS; MARBLE SETTERS:					
Area 2	$16.95	1.05	.40		
Area 4	17.42	1.05	1.55		.16
LATHERS:					
Area 2	16.75	1.00	1.50		.10
PAINTERS:					
Area 4:					
Striper	16.95	.99	.25		
SHEET METAL WORKERS:					
Area 4	15.48	3% + .68	1.16		.04
TERRAZZO WORKERS; TILE SETTERS					
Area 2	16.26	1.05	.40		
Area 4	15.52	1.05	1.55		.16
LABORERS (AREA 3)					
Clark, Cowlitz, Klickitat, Skamania,, and Wahkiakum Counties.					
Change Fringe Benefits only		1.10	1.40	.65	.10

SUPERSEDEAS DECISION

STATE: ALABAMA COUNTY: MOBILE
DECISION NUMBER: AL81-1273 DATE: DATE OF PUBLICATION
Supersedes Decision No.: AL80-1042 dated January 4, 1980 in 45 FR 1341
DESCRIPTION OF WORK: Building Construction Projects (does not include residential construction consisting of single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
BRICKLAYERS	$11.98		1.70		.10
CARPENTERS	11.57	.65	.50		.10
MILLWRIGHTS	12.21	.65	.50		.10
CEMENT MASONS	11.30	.65	.50		.10
ELEVATOR CONSTRUCTORS	11.71	1.195	.95	a + b	.035
ELECTRICIANS	13.57	.80	3% + .50		.05
GLAZIERS	7.30				
IRONWORKERS, Structural, Ornamental, & Reinforcing	12.04	.65	.50		.10
LABORERS:					
Unskilled	7.48	.65	.50		.10
Air Tool Operator	7.73	.65	.50		.10
Mason Tenders	7.73	.65	.50		.10
Mortar Mixers	7.73	.65	.50		.10
Pipelayers	7.73	.65	.50		.10
LATHERS	10.48	.55	.40		.05
PAINTERS					
Brush	12.09	.65	.50		.01
Paperhanger	12.34	.65	.50		.01
Spray	13.09	.65	.50		.01
PILEDRIVERMEN	11.88	.65	.50		.10
PLASTERERS	12.14	.65	.50		.10
PLUMBERS & PIPEFITTERS & STEAMFITTERS	14.65	.70	1.20		.06
ROOFERS	6.00				
SPRINKLER FITTERS	13.69	.95	1.40		.08
TILE SETTERS	11.98		1.70		.10
TRUCK DRIVERS	5.50				
WELDERS - Rate for Craft					
POWER EQUIPMENT OPERATORS:					
Backhoe	12.09	.65	.50		.10
Bulldozers	11.70	.65	.50		.10
Crane	12.09	.65	.50		.10
Cherry Picker	12.09	.65	.50		.10
Forklift	11.70	.65	.50		.10
Drum Hoist	11.70	.65	.50		.10

PAID HOLIDAYS:

A-New Year's Day, B-Memorial Day, C-Independence Day, D-Labor Day, E-Thanksgiving Day, F-Christmas Day

FOOTNOTES:

a. 7 Paid Holidays A through F, plus the Friday after Thanksgiving Day.

b. Employer contributes 8% basic hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes 6% basic hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years.

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: Colorado

COUNTIES: Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Elbert, Gilpin, Grand, Jefferson, Lake, Larimer, Morgan, Park, Summit, and Weld

DECISION NUMBER: CO81-5133

DATE: Date of Publication

Supersedes Decision No. CO80-5137 dated October 24, 1980, in 45 FR 70577

DESCRIPTION OF WORK: Building Projects (does not include 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	$13.49	.75	$1.52		
BOILERMAKERS	14.97	1.375	1.15		.05
BRICKLAYERS; Stonemasons:					
Eagle County	12.29	.85	1.10		.06
Boulder and Grand Counties	12.15	.85	1.10		.05
Elbert, Lake and Park Counties	12.25	.85	.95		.05
Larimer County	12.29	.85	1.10		.05
Remaining Counties	12.29	.85	1.10		.06
CARPENTERS:*					
Area 1:					
Zone 1	11.065	1.00	1.00	.95	.09
Zone 2	12.45	1.00	1.00	.95	.09
Zone 3	13.83	1.00	1.00	.95	.09
Area 2:					
Zone 1	11.065	1.00	1.00	.95	.09
Zone 2	12.45	1.00	1.00	.95	.09
Zone 3	13.83	1.00	1.00	.95	.09
Area 3	11.065	1.00	1.00	.95	.09
Area 4:					
Zone 1	10.37	1.00	1.00	.95	.09
Zone 2	10.87	1.00	1.00	.95	.09
Zone 3	11.12	1.00	1.00	.95	.09
CEMENT MASONS:					
Cement Masons	12.04	.60	1.15		.13
Working with composition materials and color	12.54	.60	1.15		.13
Working on scaffold, swing stage, or temporary platform over 25'	12.29	.60	1.15		.13
DRYWALL INSTALLERS	11.72	1.00	.85	1.00	.07
ELECTRICIANS:					
Elbert and Park Counties: Electricians	12.75	.72	3%+.65		.015
Larimer, Morgan and Weld Counties: Electricians	14.85	.70	3%+1.25		3/10%
Remaining Counties:					
Electricians	14.85	.59	3%+1.25		3/10%
Cable Splicers	15.10	.59	3%+1.25		3/10%

*See AREA and ZONE Descriptions Page 4

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS	$13.26	$1.195	.82	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	9.23	1.195	.82	a	.035
GLAZIERS	14.25	.65	.80	b	.035
IRONWORKERS:					
Structural, Ornamental, and Reinforcing	12.35	1.04	1.25		.12
LATHERS	13.44				.01
MARBLE SETTERS:					
Elbert, Lake, and Park Counties	11.79	.85	.70		
Remaining Counties	14.14	1.20	1.30		.04
MILLWRIGHTS	12.66	1.00	.85		.14
PAINTERS:					
*Park County (southern half)					
Brush, Roller, Taper, hand texture	10.79	.95	.70		.04
Steel and Paperhanger	11.29	.95	.70		.04
Spray	12.04	.95	.70		.04
Remaining Counties including northern half of Park County:*					
Brush and Roller; Hardwood Finisher	15.01	.95	1.15		.08
Drywall Finisher (hand)	15.26	.95	1.15		.08
Drywall Finisher (tool); Spray; Swing Stage and Chair; Sandblast (exterior); Paperhanger	15.61	.95	1.15		.08
Sandblast (interior); Steeplejack	16.93	.95	1.15		.08
PLASTERERS	13.44				.01
PLUMBERS; Steamfitters:					
Southern portions of Douglas, Elbert, and Park Counties*	12.90	.85	1.15	1.60	.10
Boulder County	13.25	.90	1.25	.95	.15
Remaining Counties (including northern portions of Douglas, Elbert, and Park Counties)	14.47	1.00	1.25	1.00	.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Eagle County and southern portions of Lake, Jefferson, Park, Douglas, and Elbert Counties**	$11.41	.59	.40		
Remaining Counties including northern portions of Lake, Park, Jefferson, Douglas, and Elbert Counties	13.32	.85	.50		.08
SHEET METAL WORKERS	13.20	3%+.73	1.51		.10
SOFT FLOOR LAYERS	13.14	.80	1.30	1.00	.13
SPRINKLER FITTERS	15.31	.95	1.40		.08
TERRAZZO WORKERS:					
Elbert, Lake, and Park Counties	11.79	.85	.70		
Remaining Counties	12.40	1.10	1.15		.04
TILE LAYERS:					
Elbert, Lake, and Park Counties	11.79	.85	.70		
Remaining Counties	14.14	1.20	1.30		.04
TILE, MARBLE and TERRAZZO FINISHERS:					
Finishers	9.55	1.20	1.30	.50	
Floor Grinders	9.70	1.20	1.30	.50	
Base Grinders	10.25	1.20	1.30	.50	

*Park County dividing Line: Line from the S.W. corner of Jefferson County to the S.E. corner of Lake County
** Area south of Lake County to a point 2 miles north of the City of Leadville to a point 1/2 mile north of the City of Limon at the west border of Lincoln County

FOOTNOTES:
a. Employer contributes 8% basic hourly rate for over 5 years service and 6% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F.
b. 15 days Paid Vacation after 1600 hours

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day;
D-Labor Day; E-Thanksgiving Day; F-Christmas Day

AREA and ZONE DESCRIPITONS

CARPENTERS:
Area 1: Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Elbert, Grand, Gilpin, and Jefferson Counties; Park County (northern area):
(a) Denver Metropolitan Area including Louisville, Golden, Boulder, and Longmont basing points:
Zone 1: 0 to 20 miles
Zone 2: 20 to 50 miles
Zone 3: 50 miles and over

Area 2: Morgan and Weld Counties:
(b) Denver Northeastern Area of Colorado including Greeley, Loveland, and Fort Morgan basing points:
Zone 1: 0 to 20 miles
Zone 2: 20 to 50 miles
Zone 3: 50 miles and over

Area 3: Larimer County (S.E. portion within Loveland basing point, Zone 1)

Area 4: Larimer (Remainder of County); Eagle, Lake, and Park Counties (south 40 miles); Summit County:
Zone 1: 0 to 30 miles from Post Office in Leadville or Fort Collins
Zone 2: 30 to 60 miles from Post Office in Leadville or Fort Collins
Zone 3: All work outside of the 60 mile radius from Post Office in Leadville or Fort Collins

LABORERS	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Education and or Appr. Tr.
	ZONE 1	ZONE 2	ZONE 3				
Group 1	$ 5.50	$5.95	$6.40	.59	.70		.05
Group 2	8.65	9.10	9.55	.59	.70		.05
Group 3	8.93	9.38	9.83	.59	.70		.05
Group 4	9.15	9.60	10.05	.59	.70		.05
Group 5	9.20	9.65	10.10	.59	.70		.05
Group 6	9.45	9.90	10.35	.59	.70		.05

See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications

Group 1: Watchmen tending Heaters and Pumps

Group 2: Building Construction Laborer

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

POWER EQUIPMENT OPERATORS: (Other than for work in Tunnels, Shafts, and Raises)	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2				
Group 1	$ 9.75	$10.50	.93	$1.10	.55	.12
Group 2	10.10	10.85	.93	1.10	.55	.12
Group 3	10.45	11.20	.93	1.10	.55	.12
Group 4	10.60	11.35	.93	1.10	.55	.12
Group 5	10.75	11.50	.93	1.10	.55	.12
Group 6	10.90	11.65	.93	1.10	.55	.12
(For work in Tunnels, Shafts, and Raises)						
Group 1	9.90	10.65	.93	1.10	.55	.12
Group 2	10.25	11.00	.93	1.10	.55	.12
Group 3	10.35	11.10	.93	1.10	.55	.12
Group 4	10.60	11.35	.93	1.10	.55	.12
Group 5	10.75	11.50	.93	1.10	.55	.12
Group 6	11.15	11.90	.93	1.10	.55	.12

*See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Tender to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments Rodman, Chainman, Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete Finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, Rotary, Churn, or Cable Tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Pile-driver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck-type

(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2				
Group 1	$ 9.36	$9.86	.94	.70	.40	
Group 2	9.46	9.96	.94	.70	.40	
Group 3	9.56	10.06	.94	.70	.40	
Group 4	9.61	10.11	.94	.70	.40	
Group 5	9.66	10.16	.94	.70	.40	
Group 6	9.71	10.21	.94	.70	.40	
Group 7	9.76	10.26	.94	.70	.40	
Group 8	9.81	10.31	.94	.70	.40	
Group 9	9.91	10.41	.94	.70	.40	
Group 10	9.96	10.46	.94	.70	.40	
Group 11	10.06	10.56	.94	.70	.40	
Group 12	10.21	10.71	.94	.70	.40	
Group 13	10.26	10.76	.94	.70	.40	
Group 14	10.36	10.86	.94	.70	.40	
Group 15	10.46	10.96	.94	.70	.40	
Group 16	10.56	11.06	.94	.70	.40	
Group 17	10.66	11.16	.94	.70	.40	
Group 18	10.86	11.36	.94	.70	.40	
See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications						

TRUCK DRIVERS

Group 1: Pickups; Tenders; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse Men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Tenders; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Specialty and Boisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump Trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to & including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

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)).

ZONE DESCRIPTIONS

LABORERS

CITIES within ZONES 1, 2, and 3:

Boulder	Denver	Dillon
Eagle	Golden	Fort Collins
Fort Morgan	Leadville	Granby
Greeley	Littleton	Vail

ZONE 1 - That area encompassed by 0 to 30 driving miles from the Main Post Office
ZONE 2 - That area encompassed by 30 to 70 driving miles from the Main Post Office
ZONE 3 - That area encompassed by 70 driving miles and over from the Main Post Office

POWER EQUIPMENT OPERATORS and TRUCK DRIVERS

A. Counties entirely within Zone 1:

Boulder	Denver	Douglas
Clear Creek	Gilpin	Jefferson
Larimer	Morgan	Weld

B. Counties entirely within Zone 2:
Grand Lake Park Summit

C. Legal description of the portions of Adams, Arapahoe, Eagle and Elbert Counties which are included within Zone 1, as follows:
All of Adams, Arapahoe, Elbert Counties lying west of the Township line between R59W and R60W of the 8th Guide Meridian West; and all of Eagle County lying West of the Township line between R80W and R81W of the 10th Guide Meridian West

D. Legal description of the portions of Adams, Arapahoe, Eagle and Elbert Counties which are included within Zone 2, as follows:
All of Adams, Arapahoe, Elbert Counties lying East of the Township line between R59 and R60W of the 8th Guide Meridian West, and all of Eagle County lying East of the Township line between R80W and R81W of the 9th Guide Meridian West

SUPERSEDEAS DECISION

STATE: Colorado COUNTY: El Paso
DECISION NUMBER: CO81-5134 DATE: Date of Publication
Supersedes Decision No. CO80-5138 dated October 24, 1980, in 45 FR 70677
DESCRIPTION OF WORK: Building Projects (does not include 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	$13.49	.75	$1.52		
BOILERMAKERS	13.87	1.375	1.15		.05
BRICKLAYERS; Stonemasons	12.25	.85	.95		.04
CARPENTERS:					
Zone 1: 0-40 miles from Post Office in Colorado Springs	10.37	1.00	1.00	.95	.07
Zone 2: 40-75 miles from Post Office in Colorado Springs	10.87	1.00	1.00	.95	.07
Zone 3: 75 miles and over	11.12	1.00	1.00	.95	.07
CEMENT MASONS:					
Cement Masons	12.04	.59	1.15		.13
Working with composition materials and color	12.54	.59	1.15		.13
Working on temporary platform over 25'	12.29	.59	1.15		.13
DRYWALL INSTALLERS	11.72	1.00	.85	1.00	.07
ELECTRICIANS	14.20	.75	3%+1.00		.015
ELEVATOR CONSTRUCTORS	13.20	1.195	.82	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	9.28	1.195	.82	a	.035
GLAZIERS	14.25	.65	.80	b	
IRONWORKERS:					
Structural, Ornamental, and Reinforcing	12.35	1.04	1.25		.12
LATHERS	12.64				.01
MARBLE SETTERS	11.79	.85	.70		
MILLWRIGHTS	12.66	1.00	.85		.14
PAINTERS:					
Brush and Roller; Tapers, hand texture	10.79	.95	.70		.04
Paperhangers; Steel Brush	11.29	.95	.70		.04
Spray painters	11.54	.95	.70		.04
Steel, Spray	12.04	.95	.70		.04
PLASTERERS	13.44				.01
PLUMBERS; Pipefitters	12.90	.85	1.15	1.60	.10
ROOFERS	11.41	.59	.40		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
SHEET METAL WORKERS	$13.20	3%+.73	$1.51		.10
SOFT FLOOR LAYERS	13.14	.80	1.30	1.00	.13
SPRINKLER FITTERS	15.31	.95	1.40		.08
TERRAZZO WORKERS	14.14	1.20	1.30		.04
TILE SETTERS	11.79	.85	.70		
TILE, MARBLE and TERRAZZO FINISHERS:					
Finishers	9.55	1.20	1.30	.50	
Floor Grinders	9.70	1.20	1.30	.50	
Base Grinders	10.25	1.20	1.30	.50	
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental					

FOOTNOTES:
a. Employer contributes 8% of basic hourly rate for over 5 years' service; 6% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F.
b. 15 days Paid Vacation after 1600 hours

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

LABORERS	Basic Hourly Rates ZONE 1	Basic Hourly Rates ZONE 2	Basic Hourly Rates ZONE 3	Fringe Benefits Payments H & W	Pensions	Vacation	Education and or Appr. Tr.
Group 1	$ 5.50	$5.95	$6.40	.59	.70		.05
Group 2	8.65	9.10	9.55	.59	.70		.05
Group 3	8.93	9.38	9.83	.59	.70		.05
Group 4	9.15	9.60	10.05	.59	.70		.05
Group 5	9.20	9.65	10.10	.59	.70		.05
Group 6	9.45	9.90	10.35	.59	.70		.05

Group 1: Watchmen tending Heaters and Pumps

Group 2: Building Construction Laborer

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

ZONE DESCRIPTIONS

ZONE 1: That area encompassed by 0 to 30 driving miles from the Main Post Office in Colorado Springs
ZONE 2: That area encompassed by 30 to 70 driving miles from the Main Post Office in Colorado Springs
ZONE 3: That area encompassed by 70 driving miles and over from the Main Post Office in Colorado Springs

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: (Other than for work in Tunnels, Shafts, and Raises):					
Group 1	$9.75	.93	$1.10	.55	.12
Group 2	10.10	.93	1.10	.55	.12
Group 3	10.45	.93	1.10	.55	.12
Group 4	10.60	.93	1.10	.55	.12
Group 5	10.75	.93	1.10	.55	.12
Group 6	10.90	.93	1.10	.55	.12
(For work in Tunnels, Shafts, and Raises):					
Group 1	9.90	.93	1.10	.55	.12
Group 2	10.25	.93	1.10	.55	.12
Group 3	10.35	.93	1.10	.55	.12
Group 4	10.60	.93	1.10	.55	.12
Group 5	10.75	.93	1.10	.55	.12
Group 6	11.15	.93	1.10	.55	.12

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts, and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Tender to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments Rodman, Chainman, Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete Finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, Rotary, Churn, or Cable Tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Pile-driver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$9.36	.94	.70	.40	
Group 2	9.46	.94	.70	.40	
Group 3	9.56	.94	.70	.40	
Group 4	9.60	.94	.70	.40	
Group 5	9.66	.94	.70	.40	
Group 6	9.71	.94	.70	.40	
Group 7	9.76	.94	.70	.40	
Group 8	9.81	.94	.70	.40	
Group 9	9.91	.94	.70	.40	
Group 10	9.96	.94	.70	.40	
Group 11	10.06	.94	.70	.40	
Group 12	10.21	.94	.70	.40	
Group 13	10.26	.94	.70	.40	
Group 14	10.36	.94	.70	.40	
Group 15	10.46	.94	.70	.40	
Group 16	10.56	.94	.70	.40	
Group 17	10.66	.94	.70	.40	
Group 18	10.86	.94	.70	.40	

Group 1: Pickups; Tenders; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse Men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Tenders; material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

TRUCK DRIVERS (Cont'd)

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Specialty and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump Trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

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: Colorado

COUNTIES: Delta, Garfield, Gunnison, Mesa, Montrose, and Pitkin

DECISION NUMBER: CO81-5135

DATE: Date of Publication

Supersedes Decision No. CO80-5139 dated October 24, 1980, in 45 FR 70686

DESCRIPTION OF WORK: Building Projects (does not include 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	$13.49	.75	$1.52		
BOILERMAKERS	13.87	1.375	1.15		.05
BRICKLAYERS; Stonemasons:					
Pitkin County	12.29	.85	1.10		.06
Remaining Counties	11.90	.85	1.10		.05
CARPENTERS:					
Post Office basing points in the Cities of Leadville, Fort Collins, Glenwood Springs, Grand Junction, Gunnison and Montrose:					
Zone 1: 0-30 miles from nearest basing point	10.37	1.00	1.00	.95	.07
Zone 2: 30-60 miles from nearest basing point	10.87	1.00	1.00	.95	.07
Zone 3: 60 miles and over from nearest basing point	11.12	1.00	1.00	.95	.07
CEMENT MASONS:					
Cement Masons	12.04	.59	1.15		.13
Working with composition materials and color	12.54	.59	1.15		.13
Working on scaffold, swing stage or temporary platform over 25'	12.29	.59	1.15		.13
DRYWALL INSTALLERS	11.72	1.00	.85	1.00	.07
ELECTRICIANS:					
Electricians	14.85	1.00	3%+.50		1%
Cable Splicers	15.10	1.00	3%+.50		1%
ELEVATOR CONSTRUCTORS	13.26	1.195	.82	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	9.28	1.195	.82	a	.035
GLAZIERS	14.25	.65	.80	b	
IRONWORKERS:					
Structural, Ornamental and Reinforcing	12.35	1.04	1.25		.12

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS:					
Delta, Gunnison, and Montrose Counties	$11.94				.01
Garfield, Mesa, and Pitkin Counties	13.44				.01
MARBLE and TILE SETTERS; TERRAZZO WORKERS	14.14	1.20	1.30		.04
MILLWRIGHTS	12.66	1.00	.85		.14
PAINTERS:					
Brush, Roller and Drywall Finishers	15.01	.95	1.15		.08
Paperhangers, Spray, Swing Stage	15.61	.95	1.15		.08
PLASTERERS	13.44				.01
PLUMBERS	12.85	.85	1.15		.10
ROOFERS:					
Garfield, Mesa, and Pitkin Counties	13.32	.85	.50		.08
Remainder of Counties	11.41	.59	.40		
SHEET METAL WORKERS	13.20	3%+.73	1.51		
SOFT FLOOR LAYERS	13.14	.80	1.30	1.00	.13
SPRINKLER FITTERS	15.31	.95	1.40		.08
TILE, MARBLE and TERRAZZO FINISHERS:					
Finishers	9.55	1.20	1.30	.50	
Floor Grinders	9.70	1.20	1.30	.50	
Base Grinders	10.25	1.20	1.30	.50	

FOOTNOTES:
a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.
b. 15 days Paid Vacation after 1600 hours

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

LABORERS:	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2	ZONE 3				
Group 1	$ 5.50	$5.95	$6.40	.59	.70		.05
Group 2	8.65	9.10	9.55	.59	.70		.05
Group 3	8.93	9.38	9.83	.59	.70		.05
Group 4	9.15	9.60	10.05	.59	.70		.05
Group 5	9.20	9.65	10.10	.59	.70		.05
Group 6	9.45	9.90	10.35	.59	.70		.05

See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications

Group 1: Watchmen tending Heaters and Pumps

Group 2: Building Construction Laborer

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: (Other than for work in Tunnels, Shafts, and Raises)	ZONE 1	ZONE 2				
Group 1	$ 9.75	$10.50	.93	$1.10	.55	.12
Group 2	10.10	10.85	.93	1.10	.55	.12
Group 3	10.45	11.20	.93	1.10	.55	.12
Group 4	10.60	11.35	.93	1.10	.55	.12
Group 5	10.75	11.50	.93	1.10	.55	.12
Group 6	10.90	11.65	.93	1.10	.55	.12
(For work in Tunnels, Shafts, and Raises)						
Group 1	9.90	10.65	.93	1.10	.55	.12
Group 2	10.25	11.00	.93	1.10	.55	.12
Group 3	10.35	11.10	.93	1.10	.55	.12
Group 4	10.60	11.35	.93	1.10	.55	.12
Group 5	10.75	11.50	.93	1.10	.55	.12
Group 6	11.15	11.90	.93	1.10	.55	.12
See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications						

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Tender to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments Rodman, Chainman, Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete Finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, Rotary, Churn, or Cable Tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Pile-driver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts, and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2				
Group 1	$ 9.36	$9.86	.94	.70	.40	
Group 2	9.46	9.96	.94	.70	.40	
Group 3	9.56	10.06	.94	.70	.40	
Group 4	9.61	10.11	.94	.70	.40	
Group 5	9.66	10.16	.94	.70	.40	
Group 6	9.71	10.21	.94	.70	.40	
Group 7	9.76	10.26	.94	.70	.40	
Group 8	9.81	10.31	.94	.70	.40	
Group 9	9.91	10.41	.94	.70	.40	
Group 10	9.96	10.46	.94	.70	.40	
Group 11	10.06	10.56	.94	.70	.40	
Group 12	10.21	10.71	.94	.70	.40	
Group 13	10.26	10.76	.94	.70	.40	
Group 14	10.36	10.86	.94	.70	.40	
Group 15	10.46	10.96	.94	.70	.40	
Group 16	10.56	11.06	.94	.70	.40	
Group 17	10.66	11.16	.94	.70	.40	
Group 18	10.86	11.36	.94	.70	.40	

See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications

Group 1: Pickups; Tenders; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse Men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Tenders; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

TRUCK DRIVERS (Cont'd)

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Specialty and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Fireman

Group 14: Mechanic

Group 15: Dump Trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

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)).

ZONE DESCRIPTIONS

LABORERS

ZONE 1: That area encompassed by 0 to 30 driving miles from the Main Post Office in each of the following Cities:

Aspen	Glenwood Springs	Grand Junction
Gunnison	Montrose	Naturita
	Rifle	

ZONE 2: That area encompassed by 30 to 70 driving miles from the Main Post Office of the Cities listed in Zone 1

ZONE 3: That area encompassed by 70 driving miles and over from the Main Post Office of the Cities listed in Zone 1

POWER EQUIPMENT OPERATORS and TRUCK DRIVERS

A. Counties entirely within Zone 1:
Delta Garfield Mesa

B. Counties entirely within Zone 2:
Gunnison Pitkin

C. Legal description of the portion of Montrose County which is included within Zone 1, as follows:
All of Montrose County lying north of the North Line of Ouray County and said North Line extended West to the Township Line between R11W and R12W, said part lying East of said Township Line of the New Mexico Principal Meridian

D. Legal description of the portion of Montrose County which is included within Zone 2, as follows:
All of Montrose County except that part lying north of the North Line of Ouray County and said North Line extended West of said Township Line between R11W and R12W, said point being East of said Township Line of the New Mexico Principal Meridian

SUPERSEDEAS DECISION

STATE: Colorado

COUNTIES: Las Animas, Otero and Pueblo

DECISION NUMBER: CO81-5137

DATE: Date of Publication

Supersedes Decision No. CO80-5140 dated October 24, 1980, in 45 FR 70691

DESCRIPTION OF WORK: Building Projects (does not include 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	$13.49	.75	$1.52		
BOILERMAKERS	13.87	1.375	1.15		.05
BRICKLAYERS	12.17	.85	1.10		.07
CARPENTERS	10.37	1.00	1.00	.95	.07
CEMENT MASONS:					
Cement Masons	12.14	.59	1.15		.13
Working with composition material and color	12.64	.59	1.15		.13
Working on scaffold, swing stage or temporary platform over 25'	12.39	.59	1.15		.13
DRYWALL INSTALLERS	11.72	1.00	.85	1.00	.07
ELECTRICIANS:					
Zone 1: 0-12 miles from Post Office:					
Electricians	13.99	1.00	3%+1.00		1½%
Cable Splicers	15.39	1.00	3%+1.00		1½%
Zone 2: 12-20 miles from Post Office:					
Electricians	14.82	1.00	3%+1.00		1½%
Cable Splicers	16.22	1.00	3%+1.00		1½%
Zone 3: 20-32 miles from Post Office					
Electricians	15.37	1.00	3%+1.00		1½%
Cable Splicers	16.77	1.00	3%+1.00		1½%
Zone 4: 32-50 miles from Post Office:					
Electricians	16.06	1.00	3%+1.00		1½%
Cable Splicers	17.46	1.00	3%+1.00		1½%
Zone 5: Over 50 miles from Post Office:					
Electricians	16.99	1.00	3%+1.00		1½%
Cable Splicers	18.39	1.00	3%+1.00		1½%
Electrical contracts under $20,000 in Zones 4 and 5	10.75	1.00	3%+1.00		1½%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS	$13.26	$1.195	.82	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	9.28	1.195	.82	a	.035
GLAZIERS	14.25	.65	.80	b	
IRONWORKERS:					
Structural; Ornamental and Reinforcing	12.35	1.04	1.25		.12
LATHERS	10.80				.01
MARBLE and TILE SETTERS, TERRAZZO WORKERS	14.14	1.20	1.30		.04
MILLWRIGHTS	12.66	1.00	.85		.14
PAINTERS:					
Brush and Roller Painters; Tapers and Hand Texture Men:					
Zone 1: 0-20 miles	10.79	.95	.70		.04
Zone 2: 20-35 miles	11.79	.95	.70		.04
Zone 3: 35 miles and over	12.57	.95	.70		.04
Tapers using Automatic tools, Spray Painters, and Sandblasters:					
Zone 1: 0-20 miles	11.54	.95	.70		.04
Zone 2: 20-35 miles	12.54	.95	.70		.04
Zone 3: 35 miles and over	13.32	.95	.70		.04
Paper and Vinyl Hangers; Steel Brush Painters:					
Zone 1: 0-20 miles	11.29	.95	.70		.04
Zone 2: 20-35 miles	12.29	.95	.70		.04
Zone 3: 35 miles and over	13.07	.95	.70		.04
Steel Spray Painters and Sandblasters:					
Zone 1: 0-20 miles	12.54	.95	.70		.04
Zone 2: 20-35 miles	12.54	.95	.70		.04
Zone 3: 35 miles and over	13.82	.95	.70		.04
PLASTERERS	13.44				.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS:					
Zone 1: 0-15 miles from Post Office	$13.32	.85	$1.15		.08
Zone 2: 15-20 miles from Post Office	14.89	.85	1.15		.08
Zone 3: 20-40 miles from Post Office	14.32	.85	1.15		.08
Zone 4: Over 40 miles from Post Office	15.345	.85	1.15		.08
ROOFERS	11.41	.59	.40		
SHEET METAL WORKERS	13.20	3%+.73	1.51		.10
SOFT FLOOR LAYERS	13.14	.80	1.30	1.00	.13
SPRINKLER FITTERS	15.31	.95	1.40		.08
TILE, MARBLE and TERRAZZO FINISHERS:					
Finishers	9.55	1.20	1.30	.50	
Floor Grinders	9.70	1.20	1.30	.50	
Grinders	10.25	1.20	1.30	.50	

FOOTNOTES:
a. Employer contributes 8% of basic hourly rate for 5 years' service and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.
b. 15 days Paid Vacation after 1600 hours

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

LABORERS:	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2	ZONE 3				
Group 1	$ 5.50	$5.95	$6.40	.59	.70		.05
Group 2	8.65	9.10	9.55	.59	.70		.05
Group 3	8.93	9.38	9.83	.59	.70		.05
Group 4	9.15	9.60	10.05	.59	.70		.05
Group 5	9.20	9.65	10.10	.59	.70		.05
Group 6	9.45	9.90	10.35	.59	.70		.05

See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications

Group 1: Watchmen tending Heaters and Pumps

Group 2: Building Construction Laborer

Group 3: Laborers - Underpinning and Shoring eight (8) feetor more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and or Appr. Tr.
POWER EQUIPMENT OPERATORS: (Other than for work in Tunnels, Shafts, and Raises)	ZONE 1	ZONE 2				
Group 1	$ 9.75	$10.50	.93	$1.10	.55	.12
Group 2	10.10	10.85	.93	1.10	.55	.12
Group 3	10.45	11.20	.93	1.10	.55	.12
Group 4	10.60	11.35	.93	1.10	.55	.12
Group 5	10.75	11.50	.93	1.10	.55	.12
Group 6	10.90	11.65	.93	1.10	.55	.12
(For work in Tunnels, Shafts, and Raises)						
Group 1	9.90	10.65	.93	1.10	.55	.12
Group 2	10.25	11.00	.93	1.10	.55	.12
Group 3	10.35	11.10	.93	1.10	.55	.12
Group 4	10.60	11.35	.93	1.10	.55	.12
Group 5	10.75	11.50	.93	1.10	.55	.12
Group 6	11.15	11.90	.93	1.10	.55	.12
See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications						

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Tender to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments Rodman, Chainman, Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete Finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, Rotary, Churn, or Cable Tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Pile-driver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts, and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2				
Group 1	$ 9.36	$9.86	.94	.70	.40	
Group 2	9.46	9.96	.94	.70	.40	
Group 3	9.56	10.06	.94	.70	.40	
Group 4	9.61	10.11	.94	.70	.40	
Group 5	9.66	10.16	.94	.70	.40	
Group 6	9.71	10.21	.94	.70	.40	
Group 7	9.76	10.26	.94	.70	.40	
Group 8	9.81	10.31	.94	.70	.40	
Group 9	9.91	10.41	.94	.70	.40	
Group 10	9.96	10.46	.94	.70	.40	
Group 11	10.06	10.56	.94	.70	.40	
Group 12	10.21	10.71	.94	.70	.40	
Group 13	10.26	10.76	.94	.70	.40	
Group 14	10.36	10.86	.94	.70	.40	
Group 15	10.46	10.96	.94	.70	.40	
Group 16	10.56	11.06	.94	.70	.40	
Group 17	10.66	11.16	.94	.70	.40	
Group 18	10.86	11.36	.94	.70	.40	

See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications

Group 1: Pickups; Tenders; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse Men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Tenders; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

TRUCK DRIVERS (Cont'd)

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Specialty and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump Trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

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)).

ZONE DESCRIPTIONS

LABORERS

ZONE 1: that area encompassed by 0 to 30 driving miles from the Main Post Office in each of the following Cities:

Pueblo La Junta Trinidad

ZONE 2: that area encompassed by 30 to 70 driving miles from the Main Post Office in the Cities listed in Zone 1

ZONE 3: that area encompassed by 70 driving miles and over from the Main Post Office in the Cities listed in Zone 1

POWER EQUIPMENT OPERATORS and TRUCK DRIVERS

A. Counties entirely within Zone 1:
Otero Pueblo

B. Portions of Las Animas County which are included within Zone 1, as follows:
All of Las Animas County lying west of the Township Line between R59W and R60W of the 7th Guide Meridian West

C. Portions of Las Animas County which are included within Zone 2, as follows:
All of Las Animas County lying East of the Township Line between R59W and R60W of the 7th Guide Meridian West

SUPERSEDEAS DECISION

STATE: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin

DECISION NUMBER: IL81-2049

Supersedeas Decision No. IL79-2062 dated July 6, 1979 on 44FR 39904

DESCRIPTION OF WORK: Dredging on the Great Lakes, their connecting and tributory waters, including the Illinois Waterway to the lock at Lockport, Illinois; and in the New York State Barge Canal System between Tonawanda, New York, and Waterford, New York, and Oswego, New York and on the St. Lawrence River Eastward to the International Boundary near St. Regis, New York

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DIPPER & HYDRAULIC DREDGING:					
Chief Engineer	17.97	.75	.70	a	
Operators	17.83	.75	.70	a	
Assistant Engineer	17.22	.75	.70	a	
Welder	17.08	.75	.70	a	
Cranemen - Dipper Dredging	17.08	.75	.70	a	
Spill Barge Operator - Hydraulic Dredging	17.08	.75	.70	a	
DRILL BOATS:					
Engineers	13.22	.75	.70	c	
Blasters	13.36	.75	.70	c	
Firemen	12.82	.75	.70	c	
Drillers, Welders or Machinists	13.25	.75	.70	c	
Oilers	12.61	.75	.70	c	
TUG ENGINEERS	14.76		.80	a	
TUG OPERATORS - ON LAUNCH	14.34		.80	a	
FLOATING EQUIPMENT:					
(Clamshell, Dragline and Marine Construction)					
Engineers and Operators	17.85	f		d&e	
Equipment Operators	16.05	f		d&e	
Firemen	15.15	f		d&e	
Oilers	13.35	f		d&e	
TUG WORKERS:					
Firemen, Linesmen, Oilers, Deckhands, Scowmen (on/or with Tugboats, Launches or other Selfpropelled Boats)	14.42	b			
DREDGE WORKERS:					
Firemen, Oiler, Deckhands and Scowmen (with Dipper Dredges, Hydraulic Dredges or other Floating Equipment engaged in Dredging Operations); Pipeline Men (both afloat and shore, including loading, unloading, installing, maintaining and handling pipe lines for Hydraulic Dredges and Sandboats)	14.42	b			
Range and Sweepmen, Service Truck Drivers	11.20	b			

DECISION NO. IL81-2049

FOOTNOTES:

a. 8 paid holidays: A through F plus Washington's Birthday and Veterans' Day; 6½ days vacation with pay for 104 days of service, one additional day of vacation with pay for each of the next 3 periods of 26 days of service, and for 208 days or over of service 15 days of vacation with pay, all in one calendar year. Employees not qualifying for vacation, as set forth above, will receive one day's vacation with pay for each full 24 days of service in one calendar year.

b. $9.10 per day, per employee.

c. 8 paid holidays: A through F plus Washington's Birthday and Veterans' Day; 6½ days vacation with pay for 84 days of service, one additional day of vacation with pay for each additional 21 2/3 days of service, all in one calendar year. Employees not qualifying for vacation, as set forth above, are to receive one day's vacation with pay for each full 20 days of service in one calendar year.

d. 9 paid holidays: A through F plus Washington's Birthday, Veterans' Day; and Paul Hall's Day.

e. ½ day vacation for each full 10 days employment in one calendar year.

f. $3.50 per hour in fringe benefits (excluding vacation payments).

PAID HOLIDAYS (Where Applicable):

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

SUPERSEDEAS DECISION

STATE: Kentucky COUNTIES: See Below
DECISION NUMBER: KY81-1274 DATE: Date of Publication
Supersedes Decision No. KY79-1166 dated December 14, 1979 in 44 FR 72794
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS - includes single family homes and apartments up to and including four stories

Bell, Casey, Clay, Harlan, Knox, Laurel, Leslie, McCreary, Pulaski, Rockcastle, Russell, Wayne & Whitley	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
A/C & Heating Mechanics	$6.00				
Carpenters	6.06				
Cement Masons	5.71				
Drywall Hangers	6.00				
Drywall Finishers	6.00				
Electricians	6.41				
Insulation Installers	4.66				
Laborers:					
Common	4.01				
Asphalt Rakers	5.50				
Mortar Mixers	4.25				
Painters	5.69				
Plumbers	6.67				
Roofers	5.62				
Sheet Metal Workers	6.00				
Soft Floor Layers	5.47				
Truck Drivers	4.23				
Welders - Rate for craft					
POWER EQUIPMENT OPERATORS					
Bulldozers	7.55				
Front End Loaders	7.74				
Grader	8.52				
Paver	7.71				
Roller	7.54				
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii))					

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federal register

Friday
July 31, 1981

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

Licensing of Ocean Thermal Energy Conversion Facilities and Plantships

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 981

Licensing of Ocean Thermal Energy Conversion Facilities and Plantships

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

ACTION: Final rule.

SUMMARY: NOAA is establishing a stable legal system and a streamlined licensing process to facilitate commercial development of ocean thermal energy conversion (OTEC) facilities and plantships. This Final Rule sets out the details of a simplified licensing system for ownership, construction, location, and operation of OTEC facilities and plantships which are associated with the United States or U.S. citizens, and is being issued in accordance with the responsibilities assigned to NOAA by the Ocean Thermal Energy Conversion Act of 1980, Pub. L. 96-320, ("the Act").

EFFECTIVE DATE: September 3, 1981.

ADDRESS: Requests for documents associated with this rulemaking should be made to the Director, Office of Ocean Minerals and Energy, NOAA, Room 410, Page 1 Building, 2001 Wisconsin Avenue, NW, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Richard Norling or Lowell Martin, Office of Ocean Minerals and Energy, NOAA, Room 410, Page 1 Building, 2001 Wisconsin Avenue, NW, Washington, D.C. 20235; Telephone: (202) 254-3483.

SUPPLEMENTARY INFORMATION:

I. Principal Author

The principal author of this Final Rule is Lowell F. Martin of the Office of Ocean Minerals and Energy, NOAA, assisted by the NOAA Office of General Counsel.

II. Prior Actions in the Rulemaking

A. Environmental Scoping Process

To provide for an early and open process to determine the scope of environmental issues associated with development of OTEC licensing regulations, NOAA developed an environmental issues discussion document and held a public "scoping" meeting on October 30, 1980. Notice of the scoping meeting and the availability of the discussion paper was published at 45 FR 63543 and 63544 on September 25, 1980. A draft environmental impact statement on this rulemaking was made available for public comment on April 3, 1981, 46 FR 20283. (See Section VI. E of this preamble for information on the final environmental impact statement developed as part of the rulemaking.)

B. Rulemaking

To provide an early opportunity for interested persons to contribute to development of these regulations, NOAA published an Advance Notice of Proposed Rulemaking (ANPR) at 45 FR 77038 on November 21, 1980. The ANPR identified three general alternative regulatory approaches under consideration by NOAA as well as 20 specific issues on which NOAA invited public comment. The ANPR was mailed to several hundred interested persons. A public hearing was held on January 7, 1981. A Notice of Proposed Rulemaking (NPR) was published in the **Federal Register** on March 30, 1981, 46 FR 19418. Public hearings on the NPR were held in Honolulu, Hawaii, San Juan, Puerto Rico, and Washington, D.C.

III. Availability of Comments

Comments received in response to the ANPR and NPR are available for public examination and copying during normal business hours in Room 410, Page 1 Building, 2001 Wisconsin Avenue, N.W., Washington, D.C.

IV. NOAA's Responses to Comments Received on the NPR

As noted in section II.B. of this preamble, NOAA published an NPR on the OTEC licensing program on March 30, 1981. In response to the written comments received and statements made at the public hearings NOAA has developed these final rules.

A. General Comments

The eight general comments received on the NPR were favorable to the positions taken by NOAA in the NPR. In particular there was strong endorsement for the voluntary Consolidated Application Review or CAR process which has been incorporated into these final rules in Subpart C. Numerous commentors strongly favored the procedural deadlines proposed in the NPR, which were derived from the Act, and they have been codified in these final rules.

B. Land-based OTEC Facilities

NOAA took the position in the NPR that the legislative history of the Act demonstrated Congressional intent that OTEC facilities located in part on land be subject to the licensing requirements of these regulations. However, the difficulty in documenting such "land-based" facilities under existing U.S. vessel documentation laws was recognized. All commentors on this issue except the U.S. Coast Guard endorsed NOAA's position as necessary for orderly commercial development of OTEC, particularly from the perspective of protection of the thermal resource necessary to the economic viability of an OTEC facility. The Coast Guard comment expressed continuing reservations regarding the documentation issue. NOAA and the Coast Guard have reviewed this problem and determined that its solution rests in recommending to Congress that the Act be amended so that documentation as a prerequisite to licensing will not be required for an OTEC facility located in part above the highwater mark, i.e. a "land-based" facility. NOAA and the Coast Guard will work together to achieve this legislative result.

C. Specific Comments

This section of the preamble describes specific comments received on the NPR and NOAA's responses as reflected in the final rules. Section numbers refer to sections of the final rules, which have been renumbered to a 981 series from the 1001 series used in the NPR.

§ 981.40 *Definitions.* One commentor suggested that the definition of "designated application area" be changed to refer only to impacts of the proposed OTEC facility or plantship on existing OTEC facilities or plantships. Because section 102(e) of the Act requires consideration of the effect of licensing the proposed OTEC operation on other potential OTEC operations in the same geographic area, the suggestion has not been adopted. Another commentor suggested that the definition of "pollutant" be changed by substituting the words "temperature difference" for the word "heat" because an OTEC facility or plantship could discharge water drawn up from the deep ocean at a temperature below that of the surrounding waters. This change has been adopted in the final regulations.

§ 981.50 *Who must apply for an OTEC license? (and who does not need one).* One commentor requested that this section be changed to make clear that site evaluation and pre-construction testing activities conducted prior to receiving an OTEC license are not subject to the requirements of these regulations. NOAA believes that the wording of § 1001.50 of the NPR adequately addresses this situation and no change has been made in these final rules. Note, however, that Subpart H of this Part is reserved for such regulations, should they become necessary in the future. Another commentor expressed

displeasure over the fact that the Department of Energy would exercise control over the operation of OTEC demonstration projects so designated by the Secretary of Energy under the proposed wording of this section. That situation is a requirement of section 116 of the Act and no change has been made in these final regulations.

A commentor questioned whether or not an existing fossil fueled power plant or other source of waste heat would be required to obtain an OTEC license if the waste heat from that installation were used to augment the thermal resource of an OTEC facility. The existing source of waste heat would not be subject to licensing under these regulations. However, a change in the discharge conditions associated with the existing power plant, or other heat source, might well require review and revision of the Federal, State and local permits associated with the existing operation.

The question was raised in public hearings as to the status of domestic OTEC activities related to export of facilities and plantships. Under the Act, such activities do not require a license under these regulations unless they involve construction activities "conducted at sea." See the meaning of the term "construction" as defined in § 981.40 of the final regulations.

§ 981.70 *Pre-application consultation.* One commentor requested clarification as to whether NOAA would assist potential license applicants in approaching other agencies involved in the license review process under the provisions of this section. NOAA believes that such assistance to potential applicants is within the scope of its role in facilitating the Federal and State permitting processes and the final rules clearly state that such assistance will be made available to potential applicants under this section.

§ 981.100 *Confidentiality of information.* Several commentors requested that this section be changed to allow for provision of the justification for confidential treatment of information at the time that its release was requested, rather than at the time the information was submitted to NOAA. Other commentors requested that copies of license applications available for public review be clearly marked to indicate where material had been deleted due to requests for confidential treatment. One commentor requested that a process for appeal be provided in the event the Administrator initially determined to release information for which confidential treatment had been requested and one commentor proposed that a more vigorous effort be made to assure that other agencies receiving confidential information for review did not improperly release it. NOAA is of the opinion that most of these suggestions have merit for assuring proper treatment of information for which confidential treatment has been requested and for reducing administrative burdens both on applicants and members of the public. Accordingly, this section of the final rules has been revised to make optional provision of the justification for confidential treatment at the time information is submitted. A person may choose to defer submitting the justification until such time as NOAA receives a request for release of the confidential information. At that time the submitter is given an opportunity to provide the justification, amend one previously submitted, or to waive the claim of confidentiality. To enable reviewers to better determine the extent to which portions of an application are subject to confidential treatment, provision has been made for assuring that review copies of applications are clearly marked to indicate where material has been deleted. To assist NOAA in properly maintaining the confidentiality of protected information, the submitter has been required to segregate those portions of the information for which confidential treatment has been requested from those for which no claim of confidentiality is asserted. Finally, the contents of the letter which NOAA will forward to other agencies along with protected information are described. The letter will advise other government entities of the extent of protection required and of the procedures to be followed in the event that the other government entity should receive a request for disclosure. NOAA has not provided for an administrative appeal process prior to actual disclosure of confidential information. However, NOAA will provide advance notice of impending release sufficient to allow the person requesting confidential treatment to seek judicial review before disclosure occurs.

In response to comments, NOAA has considered a pre-submission or contemporaneous-with-submission determination of confidentiality. This approach has been rejected because of its potential for creating a significant administrative burden while providing little countervailing benefit, since the correctness of any determination may change over time. NOAA has, however, modified the regulations to authorize, on a case-by-case basis, determinations that information not required to be submitted, but submitted voluntarily, be afforded confidential treatment.

§ 981.130 *Application Fee.* A number of commentors requested justification of the amount of the application fee, which totals $250,000 for full processing of an application. The amount of the fee is fixed at the estimated incremental cost to NOAA of processing the application, including costs to prepare the site-specific consolidated environmental impact statement required by section 107(e) of the Act. That consolidated statement must fulfill the requirements of all Federal agencies in carrying out their permitting and authorizing responsibilities on the license application. NOAA developed the overall cost estimate on the basis that two person-years of effort would be required within the NOAA program office to process a single application. The estimate also includes costs of holding the required public hearings on the application in the District of Columbia and in adjacent coastal States, as well as support costs for environmental analysis and technical review of the application. The processing cost estimate does not include general administrative overhead or costs associated with other Federal agency actions on the application. Because of comments received, NOAA has reviewed the basis for its original cost estimate, and has found no reason to change it. Accordingly, the overall license application fee remains set at $250,000 to cover NOAA's reasonable administrative costs, as required by the Act.

Several commentors requested that NOAA defer collection of the fee until such time as the OTEC operation actually commenced commercial activities or began to generate revenues. NOAA believes that the Act does not allow such deferral of payment of the fees. Thus the phased collection schedule proposed in the NPR has been retained in these final regulations. One commentor proposed that NOAA establish a post-issuance annual rental fee for use of the thermal resource by an OTEC facility or plantship. NOAA has reviewed its authority under the Act and finds no mandate to impose such a fee. One commentor noted that the proposed rules did not make it clear that the full application fee must be remitted before NOAA would issue a license. The final version of § 981.130 has been amended to make this clear.

§ 981.150 *Public Inspection and Copying.* One commentor noted that this section did not expressly provide for an application to be available for public inspection and copying in each adjacent

coastal State so designated for the application. The final version of this section has been changed to make it clear that the application will be available in all designated adjacent coastal states for the application. Provision has been added for public notice of the locations where the application will be available for public inspection and copying.

§ 981.180 *Information about the applicant and its affiliates.* Several commentors questioned the scope of information required by this and subsequent sections of Subpart B, information to be submitted with application, of the NPR. The Act requires that NOAA complete processing of the application and make a decision on issuance of the license within 356 days after its receipt. To meet this deadline and properly coordinate the activities of other State and Federal government agencies involved in the review, complete information on the proposed OTEC plantship or facility must be available at the start of the review. The need to stop the review process while additional or clarifying information is sought from the applicant must be reduced to a minimum. NOAA anticipates that an applicant will have completed a thorough preliminary design study, an economic analysis in sufficient detail to prepare a program prospectus, and have acquired environmental data sufficient for NOAA to prepare a draft environmental impact statement on the proposed OTEC operation by the time an application is submitted.

The possibility of a two phase application process in which general information would be provided initially, to be followed later in the review process with more detailed information, was proposed by a commentor. However, the Act requires the Administrator of NOAA to determine within 21 days of receipt of an application whether or not it appears to contain all of the information necessary to make a decision on license issuance. Further, the processing schedule mandated by the Act requires that full information on the OTEC proposal be available at an early stage if the deadlines for license issuance are to be met. Accordingly the phased approach to provision of application information has not been incorporated into the final regulations.

The commentor who proposed the phased approach to provision of information based it in part on the concept of establishing a "priority of right" to a particular geographic site for an OTEC facility through provision of the initial application information. However, the Act does not provide for establishment of such a "priority of right" through the application mechanism. In the event only a single application is received for a particular site, the issue of priority access to it is moot. In the event multiple OTEC facility applications are received for a particular geographic location, the provisions of section 102(i) of the Act for weighing the national interest in deciding among competing applications come into play. The only case where a "quasi priority of right" situation is recognized in the Act is in the case where more than one application is received for a particular area and no individual application would more clearly serve the national interest than another. In that situation, the Act requires that decisions on the applications be made in order of their receipt by the NOAA Administrator.

Several commentors noted that the information requested in §§ 1001.180(e)(4)(iii) and 1001.180(e)(6) on unit cost of produced electricity or other products and on estimated amounts of fuel or other raw materials to be saved through operation of the proposed OTEC facility did not appear to be necessary if only one application for an OTEC facility in a particular area were pending before the Administrator. NOAA concurs that this information is only necessary under the Act when competing OTEC facility applications are received for a single designated application area. Accordingly, the requirement to provide that information has been moved to § 981.290 and has been made conditional on receipt of multiple applications for a specific designated application area, in which case NOAA must address the national interest criteria set forth in the Act when deciding among the competing applications.

Several commentors questioned the requirement for information on the applicant's prior involvement in similar energy or product manufacturing activities required by § 1001.180(e)(7) of the NPR and requested NOAA to consult with the Department of Justice (DOJ) regarding the need for it in the context of antitrust review of an OTEC license application. NOAA has done so, and while DOJ concurs in making the provision of product pricing and fuel and raw materials savings information contingent upon receipt of multiple applications for a designated application area, DOJ has requested that information on prior related activities be required of all applicants for use in the application antitrust review required by the Act. DOJ also felt strongly that the required 3 years of such information was necessary for assessing trends. Accordingly, the requirement appears in § 981.180(e)(5) of these final regulations.

§ 981.190 *General Information on the OTEC facility on plantship.* Several minor changes to this section have been made in response to comments received. The requirement for information on projected annual gross and net production of electricity or other products contained in § 1001.180(e)(4)(i) and (e)(4)(ii) of the NPR has been placed in § 981.190(a) of the final regulations. Section 981.190(b) has been clarified to indicate that information on the thermodynamic cycle to be employed in the OTEC operation is what is being requested. Section 981.190(h) has been reworded to make clear that information on biofouling control methods is being solicited.

§ 981.220 *OTEC site information.* One commentor noted that national defense restricted areas in the vicinity of a proposed OTEC site should be identified and that change has been incorporated into § 981.220(c). It was noted by one commentor that a reconnaissance or engineering hydrographic survey would be unnecessary in the case of a plantship application, and that change has been made. A requirement to describe onshore vessel on/off loading facilities which are part of the OTEC proposal has been added in response to comments received.

§ 981.230 *Operational information.* Several commentors noted that emergency shutdown and evacuation procedures for the OTEC facility or plantship should be described in the application. That requirement has been added to the final regulations.

§ 981.240 *Design information.* One commentor noted that the NPR did not contain any explicit requirement for an applicant to describe the proposed configurations of cold and warm ocean water intake and discharge structures. While this section of the NPR inferred such a requirement, it has been explicitly stated in the final regulations.

§ 981.260 *Environmental information.* Several changes have been made in this section of the NPR on the basis of comments received. Section 981.260(a)(1) has been reworded to make it clear that the applicant must describe the boundaries of the geographic area in which the proposed OTEC operation would impact or be impacted by another OTEC operation. Section 981.260(a)(4) has been revised to make it clear that potential impacts of entrainment and impingement on biological communities

must be described. Section 981.260(a)(7) has been clarified by noting that archeological resources are among the special sites to be identified. Section 981.260(a)(12)(iii) has been modified to require a description of the applicant's proposed program to monitor the effects of cold and warm water intakes as well as discharges.

§ 981.290 *Publication of notice of application; contents of notice; call for additional applications for OTEC facilities.* This section has been amended to require that the original applicant and all subsequent applicants for a designated application area submit information on unit cost to the end user of produced electricity or product, and on fuel or other raw material savings, not later than 30 days after expiration of the 90 day period for filing additional applications for a designated application area. As noted earlier this change has been made so that such information is to be submitted only when it is necessary to a national interest determination between competing applications for the same application area.

§ 9981.320 *Antitrust review.* As noted earlier in the discussion of changes made to § 1001.180(e) of the NPR, NOAA has had additional discussions with the Department of Justice concerning the information necessary for the antitrust review required by the Act and has modified that section of the final rules accordingly. Section 981.320 has been modified to provide notice to the Attorney General if the NOAA Administrator does not accept the Attorney General's recommendation on an application that may create a situation inconsistent with the antitrust laws. In response to one question received on the NPR, NOAA has asked the Antitrust Division at the Department of Justice whether a mechanism exists for obtaining an opinion on the antitrust implications of an OTEC proposal prior to making formal application to NOAA for a license. The Antitrust Division has indicated that such a procedure does exist and that a non-binding opinion in the form of a "business review letter" describing the Department's preliminary views on antitrust issues may be obtained by consulting with the Division. The procedures for obtaining such a review are contained in 28 CFR 50.6. NOAA will assist potential applicants in obtaining these views under the pre-application consultation provisions contained in § 981.70 of these final regulations.

The Department of Justice noted that it might require information beyond that initially required by these regulations to properly conduct its antitrust review of an OTEC license application. Accordingly, the Department requested assurance that the mechanism of § 981.90 of these regulations for seeking additional information from the applicant would be available to cover that eventuality. NOAA has included that procedure to cover such situations and it will be available to the Department of Justice and other involved government agencies, if necessary, provided good cause exists for seeking the additional information.

§ 981.330 *Adjacent Coastal States.* A number of comments were received on the adjacent coastal state designation provisions of the proposed regulations. One commentor suggested that the NOAA Administrator provide the actual terms of a proposed license to the governor of an adjacent coastal State for review prior to issuance if that governor had required specific terms and/or conditions in the license to make it consistent with that State's approved Coastal Zone Management Plan. A request was made to automatically designate the governor of each adjacent coastal State as a "necessary party" in the event a formal adjudicatory hearing became necessary during the license review process. It was also requested that such a formal adjudicatory hearing be held in the adjacent coastal State. NOAA views its relation with all designated adjacent coastal States as one of continuing dialogue throughout the license application review process. Close consultation will be maintained and the concerns of each adjacent coastal State will be fully factored into the licensing decision. Section 981.560(f)(2)(i) has been amended to clarify that the administrative law judge in charge of the hearing will give special consideration to whether each adjacent coastal State should be a full party in the hearing. If the issue requiring a formal hearing concerns one of the adjacent coastal States, the administrative law judge has sufficient flexibility to admit a state as a party to the hearing. Similarly, NOAA believes that the administrative law judge has authority under § 981.560(e)(14) to hold part of the hearing in the relevant adjacent coastal State.

One commentor expressed concern that designation as an adjacent coastal State could somehow extend that State's taxing power to include an OTEC plantship which did not operate in that State's waters. Such a situation is impossible because such extraterritorial taxing authority is not granted the States by section 403(b)(2) of the Act. Although a State might achieve adjacent coastal State status under § 981.330(b) of these rules relative to plantship operations conducted on the high seas, that designation does not confer any taxing power under the terms of section 403(b)(2) of the Act.

§ 981.380 *Steps in the voluntary Consolidated Application Review (CAR) process.* Numerous commentors strongly supported the CAR concept and its potential for streamlining the OTEC license application review process. NOAA has left it essentially unchanged in these final rules. One commentor did note, however, that, as worded in the NPR, it did not appear to be available for use where multiple applications had been received for the same designated application area. Minor technical changes have been made to allow for its use in this circumstance.

§ 981.390 *Voluntary Nature of the CAR Process.* One commentor requested clarification of the impact of the CAR process on agreeements with agencies other than NOAA reached prior to making application for an OTEC license. This section has been amended to make clear that such agreements are not affected by an applicant's later decision to make use of the CAR process. Another commentor requested information on the status of an agency other than NOAA which chose not to participate in CAR. While NOAA will encourage all involved agencies to participate, CAR is voluntary, and other Federal, State, or local agencies may choose not to participate in it. Such a decision would have no impact on their existing statutory authority, or on NOAA's authority to issue an OTEC license.

§ 981.440 *Inter-agency CAR team meeting.* One commentor requested that the meeting provided for in this section of the NPR be held in a designated adjacent coastal State. NOAA concurs in the suggestion and this section of the final rules provides for holding the meeting in an adjacent coastal State, if it is practicable to do so.

§ 981.460 *Timely approval or denial of application for a license.* In response to a comment, NOAA has clarified this section to indicate that the license will be issued within 30 days after a favorable decision on the application is made.

§ 981.470 *Criteria for approval or denial.* Several commentors noted that this section of the NPR stated that the Administrator "may" issue a license, rather than that he "shall" issue one if the criteria set out in the section are satisfied by the applicant. The permissive language is derived directly from section 101(c) of the Act and has

been retained in the final regulations. While NOAA has every intention to issue licenses to qualified applicants in timely fashion, other events could intercede to make that impossible—for instance a judicial order to delay issuance of a license.

§ 981.490 *Condition precedent to issuance of license: Compliance with conditions and prior approval of changes.* Several commentors noted that this section of the NPR did not provide a mechanism for routinely requesting changes to the terms and conditions of an issued OTEC license. NOAA concurs in the need for such a mechanism. Accordingly, a new § 981.525, *Review, modification and revision of license terms and conditions*, has been added to these final regulations. That section provides for processing of changes to license terms and conditions upon request of the licensee or upon the initiative of the Administrator, and also for a periodic review by NOAA to determine if operational experience indicates the need for such changes. Commentors requested that these procedures include procedural safeguards. Section 981.525 of these final regulations includes such safeguards.

§ 981.510 *Duration of licenses and renewals.* A commentor noted that the maximum duration of the initial license was set at 25 years in the NPR and requested that provision be made for a longer duration. The 25-year maximum is specified in the Act and has been retained in the final regulations.

§ 981.520 *Terms and conditions of a license.* One commentor requested an opinion as to whether or not the coastal zone consistency provisions of § 981.520(c) superseded those 15 CFR 930, Subpart D. NOAA believes that the provisions in this section supersede those of 15 CFR 930, Subpart D, only to the extent that there are actual conflicts between the Act and Coastal Zone Management Act statutory requirements. Where the statutes can be implemented compatibly, we believe no supersession need be found.

A number of commentors requested that the wording of § 1001.520(h) of the NPR related to diligence be changed to allow for reasonable delay resulting from "unforeseen" circumstances rather than from "unforeseeable" circumstances. NOAA concurs in this approach and the final regulations have been amended accordingly. However, the "unforeseen" circumstances still will be evaluated from the prospective of a reasonable person in the position of the licensee.

§ 981.550 *Suspension, revocation, termination, relinquishment or surrender of a license.* One commentor requested that NOAA not seek Federal district court action to revoke a license under this section except for "major" violations of license terms and conditions. NOAA believes that the difficulties in developing a regulatory definition of "major" under these circumstances outweigh the uncertainty a licensee will be subject to in depending on the Administrator's discretion not to seek court action for insignificant violations of license terms and conditions. Accordingly, no change has been made to this section in the final regulations. NOAA does not expect to seek license revocation unless NOAA believes a major violation or a pattern of violations has occurred.

§ 981.560 *Formal hearing procedures.* One commentor noted that the requirement of § 1001.560(1)(2) of the NPR that the administrative law judge issue a recommended decision as soon as practicable, but normally not later than 30 days after the conclusion of the formal hearing, was a tight time constraint. NOAA recognizes this, but points out that the Act sets a deadline of 45 days after completion of hearings for agencies other than NOAA to make their final views on the license application known. Since the decision reached in a formal hearing may affect those views, it is imperative that the recommended decision be available as soon as possible after the hearing is concluded. Accordingly the 30-day provision remains the same in these final regulations.

§ 981.570 *Ex parte communications.* Several changes have been made in this section in response to comments received on the NPR. Section 981.570(c) has been revised to make its language conform to section 554(d) of the Administrative Procedures Act. A definition of the term "agency representative" has been added to § 981.570(e), which is the first place that it appears in the regulations. The exemption which would have allowed the agency representative to participate in the initial decisional process which developed the record which was the subject of the formal adjudicatory proceeding has been deleted in the final regulations as recommended in comments of the Administrative Conference of the United States.

§ 981.630 *Observers.* One commentor interpreted this section of the NPR as requiring that accommodations dedicated to observers be included in the initial design of the OTEC facility or plantship. This was not intended, and the final regulations have been amended to make clear that the requirement is to provide temporary accommodations for observers if necessary due to the remote location of the licensed OTEC facility or plantship. The language of this section in the final regulations has been changed to clarify that it relates to one or more observers at a given time.

The provision of § 1001.630(e) of the NPR under which the Administrator would have reimbursed the licensee for reasonable costs directly related to the quartering and maintaining of observers on OTEC facilities or plantships has been deleted from the final regulations. Current Administration policy is to place the financial costs of necessary regulation on the regulated industry itself, wherever feasible and appropriate. As we receive further guidance from the Administration on government cost recovery policy NOAA will clarify who will bear the cost of observers.

The observer provisions also have been modified to help assure that observer activities are reasonable, to clarify that the Master or senior operations personnel and not the observer are in charge of the safe operation of the OTEC facility or plantship, and to protect confidential information that may be included in the observer's reports.

V. Organization of the Rules

NOAA has organized these regulations so that a potential applicant can readily find the information relevant to making application for an OTEC license. The provisions have been grouped into subparts, as follows, in an effort to consolidate information on procedures and information requirements and to assist a potential applicant in orderly development of the application materials.

Subpart A—General Program Requirements. This subpart describes the purpose and scope of 15 CFR Part 981, provides definitions of terms used throughout the regulations and specifies who must (and who is not required to) apply for an OTEC license. The procedures for application, amendment of an application, and withdrawal or termination of a license application are given. The application fee and method of payment are specified.

Subpart B—Information to be Submitted with Application. This subpart specifies what information the applicant must provide with the OTEC license application. The required information relates to the siting, design, construction and deployment of the proposed OTEC facility or plantship. Information on the financial situation and organization of the applicant is specified. Environmental information

necessary to evaluate potential impacts of the proposed OTEC operation is prescribed. Information necessary to assure that the applicant's proposal complies with Federal laws and regulations other than the Act is also specified.

Subpart C—License Application Review Procedures. This subpart sets out the steps in the OTEC application review process which are mandated by the Act. The steps in the voluntary Consolidated Application Review (CAR) process which provides the applicant with the option of requesting a more integrated, coordinated review process than the minimum provided for in the Act are also prescribed.

Subpart D—Criteria for Approval or Denial of Application and Establishment of License Terms and Conditions; Renewal, Transfer, Modification, Revision, Suspension, Revocation and Termination. This subpart sets out the criteria which the NOAA Administrator will use in reaching the decision to issue or deny a particular OTEC license application. The criteria the Administrator will use for deciding among multiple applications for the same OTEC site area are also prescribed. Criteria for establishing license terms and conditions are set out. This subpart also provides for transfer and renewal of licenses and prescribes modification, revision, suspension, revocation, and termination procedures.

Subpart E—Formal Hearing Procedures. Under certain circumstances a formal adjudicatory hearing on the record may become necessary as part of the OTEC licensing or license modification or revision process. Such formal hearings are also necessary as part of the OTEC enforcement program. This subpart sets forth the basic procedures to be followed in such hearings.

Subpart F—Enforcement Procedures. This subpart prescribes the administrative procedures which will be followed in OTEC enforcement proceedings, including those related to license suspension, termination, or revocation proceedings; to issuance of compliance orders; and to assessment of civil penalties in connection with enforcement activities. This subpart also establishes rules concerning placement of authorized Federal observers on and in OTEC facilities and plantships, and describes how a person wishing to sue an alleged violator or the Administrator must give advance notice of the intended lawsuit.

VI. Other Actions Associated With These Regulations

A. Classification under Executive Order 12291 of February 17, 1981.

The NOAA Administrator considers these regulations to be major with respect to the criteria of Executive Order 12291 (EO 12291) of February 17, 1981, because they will foster and govern development of the United States commercial OTEC industry. NOAA has prepared and transmitted to the Office of Management and Budget (OMB) a final Regulatory Impact Analysis as specified by section 3 of EO 12291. The Administrator of NOAA has determined that these final rules are clearly within the authority delegated by law and consistent with Congressional intent. The rules are authorized or mandated by sections 102(a), 102(d)(2), 102(h), 106, 110(3), 112(a), 114(b)(2), 303(a) and other sections of the Act. Congressional intent is, generally, apparent in the statement of purposes of the Act, which is restated in relevant part at § 981.20 of the final regulations.

B. Regulatory Impact Analysis

NOAA has prepared a final Regulatory Impact Analysis. This analysis, which examines the potential economic impact of the proposed regulations, is available to all interested parties. The analysis examines the various alternatives NOAA considered in preparing the regulations, considered the economic benefit and cost implications of the alternatives, and explains NOAA's reasons for making the choices reflected in these regulations. The analysis has been done in such a way as to include a final regulatory flexibility analysis in compliance with the Regulatory Flexibility Act, Pub. L. 96-354. Copies of the analysis may be obtained by writing to the Director, NOAA Office of Ocean Minerals and Energy, at the address specified in the ADDRESS section of this preamble.

C. Summary of Final Regulatory Flexibility Analysis

Because of the large size and cost of commercial OTEC projects, the primary involvement of small business concerns in the OTEC industry is expected to be as contractors or subcontractors, rather than sole owners or operators of OTEC facilities or plantships. Only one license, obtained by the owner, is required. The general regulatory approach selected by NOAA for these regulations was designed to provide the greatest flexibility for, and to minimize any adverse economic impact on, any entity—large or small—which may be involved in OTEC development. The regulations do not impose any reporting, record keeping, or other compliance requirements on small governmental jurisdictions or small organizations. Copies of the combined final Regulatory Flexibility Analysis and final Regulatory Impact Analysis may be obtained by writing to the Director, NOAA Office of Ocean Minerals and Energy, at the address specified in the Address section of this preamble.

D. Paperwork Reduction Act, Pub. L. 96-511

Because of the limited number of persons initially subject to these regulations (NOAA anticipates a maximum of 3 OTEC license applications in the first year of the program), NOAA believes they do not contain a "collection of information" request within the meaning of 44 U.S.C. 3502(4) and 3502(11). Accordingly, § 981.155 of these regulations contains a statement that the information requested is not subject to the requirements of 44 U.S.C. 3507. Section 117 of the Act requires the NOAA Administrator to review these regulations periodically, at intervals of not more than every three years, and to revise them as necessary based on that review. During the review, or earlier if necessary, NOAA will review its projections of the expected number of license applications and take any actions necessary under the Paperwork Reduction Act on that basis.

E. Environmental Impact Statement

The NOAA Administrator considers issuance of final regulations implementing the Act to be a major Federal action significantly affecting the quality of the human environment. Accordingly, NOAA has prepared a Final Environmental Impact Statement (FEIS) under section 102(2)(C) of the National Environmental Policy Act of 1969 as part of this rulemaking. The FEIS has been filed with the Environmental Protection Agency. Copies may be obtained by writing to the Director, NOAA Office of Ocean Minerals and Energy, at the address specified in the Address section of this preamble.

For the reasons set out in the preamble, Title 15 of the Code of Federal Regulations is amended by adding a new *Part 981, Ocean Thermal Energy Conversion Licensing Program.* The text of the final rules follows.

Dated: July 24, 1981.

John V. Byrne,

Administrator, National Oceanic and Atmospheric Administration.

PART 981—OCEAN THERMAL ENERGY CONVERSION LICENSING PROGRAM

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Authority: Ocean Thermal Energy Conversion Act of 1980, Pub. L. 96-320, 94 Stat. 974 [42 U.S.C. 9101, *et seq.*].

Subpart A—General Program Requirements

§ 981.10 What are the Ocean Thermal Energy Conversion Program Regulations?

(a) *Coverage.* These regulations implement NOAA's responsibilities under the Ocean Thermal Energy Conversion Act of 1980. The regulations provide the procedures and information necessary to apply to NOAA for a license for the ownership, construction, and operation of ocean thermal energy conversion (OTEC) facilities and plantships. They also establish a voluntary consolidated process for review of license applications by NOAA and other Federal, State, and local government entities; state the criteria which will be used for issuance or denial of a license; prescribe criteria for establishing license terms and conditions; prescribe procedures for enforcement of the Act and this Part, and for renewal, transfer, modification, revision, suspension, revocation, termination, relinquishment, or surrender of a license.

§ 981.20 Purpose of the OTEC licensing regulations.

The regulations in this Part carry out the purposes of the Act, which include:

(a) Authorize and regulate the construction, location, ownership, and operation of OTEC facilities connected to the United States by pipeline or cable, or located in the territorial seas of the United States, consistent with the Convention on the High Seas, and general principles of international law;

(b) Authorize and regulate the construction, location, ownership, and operation of OTEC plantships documented under the laws of the United States, consistent with the Convention on the High Seas and general principles of international law;

(c) Authorize and regulate the construction, location, ownership, and operation of OTEC plantships by United States citizens, consistent with the Convention on the High Seas and general principles of international law;

(d) Establish a legal regime which will permit and encourage the development of OTEC as a commercial energy technology;

(e) Provide for the protection of the marine and coastal environment, and consideration of the interests of ocean users, to prevent or minimize any adverse impact which might occur as a consequence of the development of such OTEC facilities or plantships;

(f) Protect the interests of the United States in the location, construction, and

operation of OTEC facilities and plantships; and

(g) Protect the rights and responsibilities of adjacent coastal States in ensuring that Federal actions are consistent with approved State coastal zone management programs and other applicable State and local laws.

§ 981.30 Scope of the OTEC licensing regulations.

(a) *Subpart A* of Part 981 contains definitions and basic procedures related to any application for a license for an OTEC facility or plantship, including application fees and procedures for termination or withdrawal of an application.

(b) *Subpart B* of Part 981 prescribes the information which must be included in a license application to enable the Administrator to make the determinations required by the Act as conditions precedent to issuance or denial of an OTEC license.

(c) *Subpart C* of Part 981 prescribes license application review procedures including the Consolidated Application Review (CAR) process which will be used by NOAA and, on a voluntary basis, by the applicant and those other Federal, State, and local government entities with authority over any aspect of the OTEC operations proposed in an application.

(d) *Subpart D* of Part 981 contains the criteria upon which the Administrator will base the decision to issue or deny an OTEC license, including the criteria which will be used to decide among multiple applications for the same designated application area. This Subpart also prescribes criteria for establishing license terms and conditions, and for renewal, transfer, modification, revision, suspension, revocation, and termination of a license.

(e) *Subpart E* of Part 981 prescribes the procedures which will be used by the Administrator to conduct any formal hearings under this Part.

(f) *Subpart F* of Part 981 sets forth the administrative procedures which will be used for enforcement proceedings under the Act and this Part.

§ 981.40 Definitions.

For the purposes of this part, the following terms have the following meanings:

"Act" means the Ocean Thermal Energy Conversion Act of 1980 [Pub. L. 96-320; 94 Stat. 974; 42 U.S.C. 9101 *et seq.*];

"Adjacent coastal State" means any coastal State which is required to be designated as such by § 981.330(a) of this part or is designated as such by the Administrator in accordance with § 981.330(b) of this part;

"Administrator" means the Administrator of NOAA or a person to whom appropriate authority has been delegated;

"Affiliate" means any person, (A) in which the applicant or licensee owns or controls more than 5% interest, (B) which owns or controls more than 5% interest in the applicant or licensee, or (C) which is under common ownership or control with the applicant or licensee;

"Antitrust laws" include the Act of July 2, 1890, as amended, the Act of October 15, 1914, as amended, and sections 73 and 74 of the Act of August 27, 1894, as amended;

"Application" means any application submitted under this Part, (A) for issuance of a license for the ownership, construction, or operation of an OTEC facility or plantship; (B) for transfer or renewal of any such license; or (C) for any substantial change in any of the terms and conditions of any such license;

"CAR" means the Consolidated Application Review process described in subpart C of this part;

"Cleanup" means removal of pollutants from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, public and private property, shorelines, and beaches;

"Coastal State" means a State in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes;

"Construction" means any activities conducted at sea to supervise, inspect, actually build, or perform other functions incidental to the building, repairing, or expanding of an OTEC facility or plantship or any of its components, including but not limited to, piledriving, emplacement of mooring devices, emplacement of cables and pipelines, and deployment of the cold water pipe, and alterations, modifications, or additions to an OTEC facility or plantship;

"Controlling interest" means a direct or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person;

"Designated application area" means the projected area or areas in which the OTEC activities of the applicant might impact so as to significantly degrade the operation of another OTEC facility or plantship, and in which the operation of another OTEC facility or plantship might impact so as to significantly degrade the OTEC operation proposed by the applicant;

"EIS" means an environmental impact statement prepared under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

"Facility" means an OTEC facility;

"Governor" means the Governor of a State or the person designated by law to exercise the powers granted to the Governor pursuant to this Part;

"High seas" means that part of the oceans lying seaward of the territorial sea of the United States and outside the territorial sea, as recognized by the United States, of any other nation;

"Licensee" means the holder of a valid license for the ownership, construction, or operation of an OTEC facility or plantship that was issued, transferred, or renewed pursuant to this Part;

"Major component" means any component of an OTEC facility or plantship with a value exceeding $500,000;

"NOAA" means the National Oceanic and Atmospheric Administration;

"OTEC" means ocean thermal energy conversion;

"OTEC facility" means any facility which is standing or moored in or beyond the territorial sea of the United States and which is designed to use temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, fresh water, or product to shore, and all other associated equipment and appurtenances of such facility, to the extent they are located seaward of the high-water mark. If part of the OTEC facility is built on land, the definition includes that portion of the warm water intake structure, cold water intake structure, effluent discharge structure, and any other parts of the facility, located seaward of the high-water mark;

"OTEC plantship" means any vessel which is designed to use temperature differences in ocean water while floating unmoored or moving through such water, to produce electricity or another form or energy capable of being used directly to perform work, and includes any equipment installed on such vessel to use such electricity or

other form of energy to produce, process, refine, or manufacture a product, and any equipment used to transfer such product to other vessels for transportation to users, and all other associated equipment and appurtenances of such vessel;

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

"Plantship" means an OTEC plantship;

"Pollutant" means (A) oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with wastes; (B) dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, temperature change, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water; and (C) hazardous substances as that term is defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96–510);

"Pollutant discharge" means, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of pollutants;

"Significant contract" means any contract in an amount exceeding five hundred thousand dollars ($500,000);

"State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession over which the United States has jurisdiction;

"Test platform" means any floating or moored platform, barge, ship, or other vessel which is designed for limited-scale, at-sea operation in order to test or evaluate the operation of components or all of an OTEC system and which will not operate as an OTEC facility or plantship after the conclusion of such tests or evaluation; and

"United States citizen" means (A) any individual who is a citizen of the United States by law, birth, or naturalization; (B) any Federal, State, or local government in the United States, or any entity of any such government; or (C) any corporation, partnership, association, or other entity, organized or existing under the laws of the United States, or of any State, which has as its president or other executive officer and as its chairman of the board of directors, or holder of similar office, an individual who is a United States citizen and which has no more of its directors who are not United States citizens than constitute a minority of the number required for a quorum necessary to conduct the business of the board.

§ 981.50 Who must apply for an OTEC license (and who does not need one)?

(a) *OTEC facilities.* No person may engage in the ownership, construction, or operation of an OTEC facility which is:

(1) Documented under the laws of the United States; or

(2) Located in the territorial sea of the United States; or

(3) Connected to any State by pipeline or cable;

except in accordance with a license issued pursuant to this part.

(b) *OTEC plantships.* No citizen of the United States may engage in the ownership, construction or operation of an OTEC plantship except in accordance with a license issued pursuant ot this part, or in accordance with a license issued by a foreign nation whose licenses are found by the Administrator, after consultation with the Secretary of State, to be compatible with licenses issued pursuant to this part.

(c) *Activities which do not require a license.* The requirements of this section to obtain an OTEC license do not apply to the following activities:

(1) Ownership, construction, or operation of any ocean thermal energy conversion facility or plantship which the Secretary of Energy has designated in writing as a demonstration project for the development of alternative energy sources for the United States which is conducted by, participated in, or approved by the Department of Energy, for so long as the Secretary of Energy maintains such designation in effect. The Secretary of Energy, after consultation with the Administrator, will require such demonstration projects to abide by as many of the substantive requirements of Title I of the Act as he deems to be practicable without damaging the nature of or unduly delaying such projects;

(2) Ownership, construction, or operation of any test platform which will not operate as an OTEC facility or plantship after conclusion of the testing period;

(3) OTEC construction activities which are conducted on land or in a shipyard; and

(4) Manufacture or supplying of components for construction of an OTEC facility or plantship unless such activity takes place seaward of the high-water mark.

§ 981.60 Federal applications.

The application filed with the Administrator constitutes an application for all Federal authorizations required for ownership, construction, and operation of an OTEC facility or plantship, except for authorizations required by documentation, inspection, certification, construction, and manning laws and regulations administered by the Secretary of the department in which the Coast Guard is operating and application to the Maritime Administration for financial assistance under Title XI of the Merchant Marine Act of 1936. Procedures for review of the application by Federal agencies and departments (other than the Coast Guard) are set forth in Subpart C of this part.

§ 981.70 Pre-application consultation.

(a) *Consultation.* If requested, the Administrator will consult with any prospective applicant to assist the applicant in properly preparing the application and in contacting other Federal and State agencies involved in the application review process to discuss the prospective application.

(b) *Request.* A prospective applicant who wishes a pre-application consultation in accordance with this section should make such request in writing to the Director, Office of Ocean Minerals and Energy, NOAA, Room 410, Page 1 Building, 2001 Wisconsin Avenue, N.W., Washington, D.C. 20235.

§ 981.80 How to apply for an OTEC license.

(a) *Form.* Each application must be in writing and must include the information specified in Subpart B of this part in the order specified.

(b) *Number of copies.* 45 copies of each application must be submitted.

(c) *Where to file the application and all related documents.* Applications and all related documents shall be filed with the Administrator of NOAA, in care of the Director, NOAA Office of Ocean Minerals and Energy, Room 410, Page 1 Building, 2001 Wisconsin Avenue, N.W., Washington, D.C. 20235.

(d) *Signature.*

(1) *Who.* Each application for an OTEC license submitted under this part shall be signed by the applicant as follows:

(i) *For a corporation:* by a principal executive officer of at least the level of vice-president;

(ii) *For a partnership or sole proprietorship:* by a general partner or the proprietor, respectively;

(iii) *For a Federal, State, or local government in the United States, or any entity of any such government:* by either a principal executive officer or ranking elected official; or

(iv) *For an association or other entity:* by a principal executive officer.

(2) *Verification.* Each application shall contain a statement at the end of the application subscribed and sworn to before a notary public that the individual who signed the application has read it and that its contents are true to the individual's best knowledge and belief.

§ 981.90 Provision of additional information.

(a) *Supplemental documents.* The Administrator may require, by written notice to the applicant, that the applicant file as a supplement to the application any analysis, explanation or detailing of information in the application or any other information determined by the Administrator to be required to review or process the application.

(b) *Other Federal and State requests.* Any Federal or adjacent coastal State department or agency may file with the Administrator a request or recommendation for further information related to its authorization(s) required for ownership, construction, or operation of the proposed OTEC facility or plantship. Requests and recommendations received by the Administrator within 30 days after notice of the initial application has been published in the **Federal Register** will be fully considered before any final determination is made to require additional information of the applicant. Requests and recommendations must contain a brief statement of the need for additional information, including the nature of any safety, health, environmental, economic, or other legitimate concerns.

(c) *Time limits.* In exercising the authority to require supplemental information under this section, the Administrator may fix a reasonable time by which an applicant must meet the requirement. If an application states that required information is not yet available but will be furnished at a later date, the Administrator may specify a reasonable time by which the information must be provided. If any requirement is not met by a time fixed in accordance with this paragraph, the Administrator shall determine whether compliance with the requirement is material to processing of the application within the time deadlines prescribed in Subpart C of this part. If the Administrator determines that an unmet requirement for supplemental information is material, the Administrator may disapprove the application or suspend the application pending a determination that processing can be resumed. The period of any suspension shall not be counted in determining the dates of the deadlines prescribed in Subpart C of this part.

(d) *Copies.* 45 copies of additional information required under this section must be submitted unless the Administrator determines otherwise.

§ 981.100 Confidentiality of information.

(a) *Purpose.* This section provides a procedure by which persons submitting information pursuant to this part may request that certain information not be subject to public disclosure.

(b) *Written requests for confidential treatment.*

(1) Any person who submits any information pursuant to this part, which information is considered by him to be a trade secret, or commercial or financial information which is privileged or confidential, may request that the information be given confidential treatment.

(2)(i) Any request for confidential treatment of information:

(A) Should be submitted at the time of submission of the information;

(B) Should state the period of time for which confidential treatment is desired (e.g., until a certain date, or until the occurrence of a certain event, or permanently);

(C) Must be submitted in writing; and

(D) Must include the name, mailing address, and telephone number of an agent of the submitter who is authorized to receive notice of requests for disclosure of such information pursuant to paragraph (d) of this section.

(ii) If information is submitted to NOAA without an accompanying request for confidential treatment, the notice referred to in paragraph (d)(2) of this section need not be given. If a request for confidential treatment is received after the information itself is received, NOAA will make such efforts as are administratively practicable to associate the request with copies of the previously submitted information in the files of NOAA and the Federal and State agencies to which NOAA distributed the information. However, NOAA cannot assure that such efforts will be effective, in light of the prior distribution to Federal and State agencies and the possibility of prior disclosure of the information.

(3)(i) Information subject to a request for confidential treatment must be segregated from information for which confidential treatment is not being requested, and each page (or segregable portion of each page) subject to the request must be clearly marked with the name of the person requesting confidential treatment, the name of the applicant or licensee, and an identifying legend such as "Proprietary Information" or "Confidential Treatment Requested." Where this marking proves impracticable, a cover sheet containing the identifying names and legend must be securely attached to the compilation of information for which confidential treatment is requested. Each copy of the information for which confidential treatment has been requested must be cross-referenced to the appropriate section of the application or other document. All information for which confidential treatment is requested pertaining to the same application or other document must be submitted to NOAA in a package separate from that information for which confidential treatment is not being requested.

(ii) Each copy of any application or other document with respect to which confidential treatment of information has been requested must indicate, at each place in the application or document where confidential information has been deleted, that confidential treatment of information has been requested.

(iii) With respect to information submitted as part of an application, forty-five copies of the information for which confidential treatment is requested must be submitted.

(iv) Normally, NOAA will not make a determination as to whether confidential treatment is warranted until a request for disclosure of the information is received. However on a case-by-case basis the Administrator may decide to make a determination in advance of a request for disclosure where it would facilitate NOAA's obtaining voluntarily-submitted information (rather than information required to be submitted under this part).

(c) *Substantiation of request for confidential treatment.*

(1) Any request for confidential treatment may include a statement of the basis for believing that the information is deserving of confidential treatment which addresses the issues relevant to a determination whether the information is a trade secret, or commercial or financial information which is privileged or confidential. To the extent permitted by applicable law, part or all of any such statement

submitted will be treated as confidential if so requested by the person requesting confidential treatment. Any such statement for which confidential treatment is requested must be segregated, marked, and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(2) Issues addressed in the statement should include:

(i) The commercial or financial nature of the information;

(ii) The nature and extent of the competitive advantage enjoyed as a result of possession of the information;

(iii) The nature and extent of the competitive harm which would result from public disclosure of the information;

(iv) The extent to which the information has been disseminated to employees and contractors of the person submitting the information;

(v) The extent to which persons other than the person submitting the information possess, or have access to, the same information; and

(vi) The nature of the measures which have been and are being taken to protect the information from disclosure.

(d) *Requests for disclosure.*

(1) Any request for disclosure of information submitted, reported or collected pursuant to this Part shall be made in accordance with 15 CFR 903.7.

(2) Upon receipt of a request for disclosure of information for which confidential treatment has been requested, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested), of the request for disclosure to the person who requested confidential treatment of the information or to the designated agent. The notice also will:

(i) Inquire whether such person continues to maintain the request for confidential treatment;

(ii) Notify such person of the date (generally, not later than the close of business on the fourth working day after issuance of the notice), by which the person is strongly encouraged to deliver to NOAA a written statement that the person either:

(A) Waives or withdraws the request for confidential treatment in full or in part; or

(B) Confirms that the request for confidential treatment is maintained;

(iii) Inform such person that by such date as the Administrator specifies (generally, not later than the close of business on the fourth working day after issuance of the notice), the person:

(A) Is strongly encouraged to deliver to NOAA a written statement addressing the issues listed in paragraph (c)(2) of this section, describing the basis for believing that the information is deserving of confidential treatment, if such a statement was not previously submitted;

(B) Is strongly encouraged to deliver to NOAA an update of or supplement to any statement previously submitted under paragraph (c) of this section; and

(C) May present to the Administrator, in such forum as the Administrator deems appropriate (such as by telephone or in an informal conference), such person's arguments against disclosure of the information: and

(iv) Inform such person that the burden is on him to assure that any response to the notice is delivered to NOAA within the time specified in the notice.

(3) To the extent permitted by applicable law, part or all of any statement submitted in response to any notice issued under paragraph (d)(2) will be treated as confidential if so requested by the person submitting the response. Any such response for which confidential treatment is requested must be segregated, marked and submitted in accordance with the procedures described in paragraphs (b)(3)(i) and (b)(3)(ii) of this section.

(4) Upon the expiration of the time allowed for response under paragraph (d)(2) of this section, or sooner if authorized under paragraph (e) of this section, the Administrator will determine, in consultation with the NOAA Office of General Counsel, whether confidential treatment is warranted based on the information then available to NOAA.

(5) If the person who requested confidential treatment waives or withdraws that request, the Administrator will proceed with appropriate disclosure of the information;

(6) If the Administrator determines that confidential treatment is warranted, he will so notify the person requesting confidential treatment, and will issue an initial denial of the request for disclosure of records in accordance with 15 CFR 903.8.

(7)(i) If the Administrator determines that confidential treatment is not warranted for part or all of the information, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested), to the person who requested confidential treatment. The notice will state:

(A) The basis for the Administrator's determination;

(B) That the Administrator's determination constitutes final agency action on the request for confidential treatment;

(C) That such final agency action may be subject to judicial review under Chapter 7 of Title 5, United States Code; and

(D) That, except as otherwise provided by paragraph (d)(7)(ii) of this section, on the fourth working day after issuance of the notice described in this paragraph (d)(7)(i) the Administrator will make the information available to the person who requested disclosure unless NOAA has first been notified of the filing of an action in a Federal court to obtain judicial review of the determination, and the court has issued an appropriate order preventing or limiting disclosure.

(ii) The disclosure of information described in paragraph (e) of this section will be subject to the additional standards and procedures for disclosure set forth in that paragraph. For example, the notice under paragraph (d)(2) of this section may be omitted, or the time period allowed for response to that notice may be very short, if the Administrator makes an appropriate determination under paragraph (e)(1) of this section that the delay resulting from following the procedures of this paragraph (d) would be detrimental to the public health or safety or the environment.

(8) NOAA will keep a record of the date any notice is issued, and of the date any response is received, by NOAA under this paragraph (d).

(9) In all other respects, procedures for handling requests for records containing information submitted to, reported to, or collected by the Administrator pursuant to this Part will be in accordance with 15 CFR Part 903. For example, if 10 working days have passed after the receipt of a request for disclosure and, despite the exercise of due diligence by the agency, the Administrator cannot make a determination as to whether confidential treatment is warranted, the Administrator will issue appropriate notice in accordance with 15 CFR 903.8(b)(5).

(e) *Special limitations on disclosure of certain information.* Any information submitted to, reported to, or collected by the Administrator under this Part which is exempt from disclosure pursuant to section 552(b)(4) of Title 5, United States Code (the section of the Freedom of Information Act relating to trade secrets and commercial or financial information

which is privileged or confidential), will not:

(1) Be publicly disclosed by the Administrator or by any other officer or employee of the United States, unless the Administrator has:

(i) Determined that the disclosure is necessary to protect the public health or safety or the environment against an unreasonable risk of injury, and

(ii) Notified the person who provided the information 10 working days before the disclosure is to be made, unless the delay resulting from such notice would be detrimental to the public health or safety or the environment, or

(2) Be otherwise disclosed except:

(i)(A) To other Federal and adjacent coastal State government departments and agencies for official use,

(B) To any committee of the Congress of appropriate jurisdiction, or,

(C) Pursuant to court order, and

(ii) When the Administrator has taken appropriate steps to inform the recipient of the confidential nature of the information.

(f) *Direct Submissions of Confidential Information.* If any person (for example, an affiliate) has reason to believe that it would be prejudiced by furnishing information required from it to the applicant or licensee, such person may file the required information directly with NOAA. Information for which the person requests confidential treatment must be segregated, marked, and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(g) *Protection of confidential information transmitted by NOAA to other agencies.* Each copy of information for which confidential treatment has been requested which is transmitted by NOAA to other Federal and adjacent coastal State government departments and agencies will be accompanied by a cover letter containing:

(1) A request that the other Federal or State department or agency maintain the information in confidence in accordance with applicable law and any applicable protective agreement entered into by the Administrator and the Federal or State department or agency receiving the information;

(2) A request that the other Federal or State department or agency notify the Administrator immediately upon receipt of any request for disclosure of the information;

(3) A notification that information which is exempt from disclosure under 5 U.S.C. 552(b)(4) (the section of the Freedom of Information Act relating to trade secrets and commercial or financial information which is privileged or confidential) shall not be disclosed except in the limited circumstances provided by section 112 of the Act, and § 981.100(d) and (e) of this part; and

(4) A request that all copies of the information be returned to NOAA for secure storage or disposal promptly after the Federal or State department or agency determines that it no longer needs the information for its official use.

§ 981.110 Amendment of an application.

(a) *Requirement to amend.* If information in an application becomes materially inaccurate or incomplete after it is filed but before the license application proceeding is terminated, the applicant must promptly file an amendment furnishing the corrected or additional information. Forty-five copies of the amendment must be submitted to the Administrator.

(b) *Effect of amendment.* If the administrator determines that any amendment constitutes a major and substantial change to the applicant's original proposal, the Administrator may:

(1) Suspend the time deadlines prescribed in Subpart C of this part for processing of an application pending review of the amendment; or

(2) Require the applicant to commence a new license application proceeding.

§ 981.120 Termination of processing and withdrawal of an application.

(a) An applicant may withdraw an application at any time before the license application proceeding is terminated by delivering or mailing written notice of withdrawal to the Administrator.

(b) The Administrator will terminate a proceeding if:

(1) All applications are withdrawn before the decision approving or denying them is issued; or

(2) The applicant after written notice by the Administrator pursuant to § 981.90 of this part does not provide adequate further information to complete the application within the time fixed in the written notice, and the Administrator elects to disapprove the application under § 981.90(c) of this part.

§ 981.130 Application fees.

(a) *Schedule of payment.* The applicant must submit the application fee in accordance with the following schedule:

(1) A nonrefundable payment of one hundred thousand dollars ($100,000.00) must be submitted with each application for issuance of a license.

(2) An additional payment of one hundred thousand dollars ($100,000.00) must be submitted not later than the date of the first public hearing held by NOAA on the license application in accordance with § 981.340 of this part.

(3) A final payment of fifty thousand dollars ($50,000.00) must be submitted not later than 45 days after notice of completion of public hearings on the application is published in the **Federal Register** in accordance with § 981.360 of this part. The Administrator will not issue a license under this part unless the entire application fee has been paid.

(b) *Effect of withdrawal or termination of application.* Withdrawal of the application by the applicant or termination of the application proceedings by the Administrator will reduce the application fee due to NOAA as follows:

(1) If the application is withdrawn or terminated prior to publication in the **Federal Register** of notice of receipt of an application which appears to be complete in accordance with § 981.290 of this part, the applicant will not be liable for the additional payment of one hundred thousand dollars ($100,000.00).

(2) If the application is withdrawn or terminated before the date of the first public hearing held by NOAA on the application in accordance with § 981.340 of this part, the applicant will not be liable for the final payment of fifty thousand dollars ($50,000.00).

(c) *Payment.* The fees assessed under this section must be made payable to the "National Oceanic and Atmospheric Administration, U.S. Department of Commerce."

§ 981.140 Clerk, docket, and record of application proceeding.

(a) The mailing address for the clerk in each license application proceeding is: OTEC Docket Clerk, Office of Ocean Minerals and Energy, National Oceanic and Atmospheric Administration, Room 410, Page I Building, 2001 Wisconsin Ave., NW.; Washington, D.C. 20235.

(b) The clerk will maintain a docket and the record for each license application proceeding. The docket will list each document in the record. The record will contain all documents filed or issued in the proceeding that the clerk has received and any other documents in the proceeding that are listed on the docket in accordance with this part.

(c) Comments submitted by Federal agencies and departments on each licensing proceeding will be listed on the docket when they are received. The draft and final environmental impact statements prepared in accordance with § 981.310 of this part will be listed on the docket when they are transmitted to the Environmental Protection Agency.

§ 981.150 Public inspection and copying.

(a) A copy of each application, except information for which confidential treatment is requested (for example, as trade secrets or commercial or financial information which is privileged or confidential), will be available for public inspection and copying at:

(1) NOAA, Office of Ocean Minerals and Energy, Room 410, Page I Building, 2001 Wisconsin Ave., NW., Washington, D.C. 20235; and

(2) At least one location in each designated adjacent coastal state. The **Federal Register** notice published under § 981.290, or equivalent public notice, will announce the location.

(b)(1) The Administrator will designate a custodian of all information for which confidential treatment is requested under § 981.100 of this part. The custodian will keep a record of all persons known to have custody of any copy or copies of information which is given confidential treatment.

(2) The custodian will not make public for inspection information for which confidential treatment is requested nor otherwise disclose such information unless the Administrator, after consultation with the NOAA Office of General Counsel, is of the opinion that the applicable requirements of § 981.100 of this part have been satisfied.

§ 981.155 Compliance with Paperwork Reduction Act.

In accordance with 44 U.S.C. 3506(c)(5) and 3512, NOAA hereby informs affected persons that the requests for information under this Part requiring:

(a) Submission of specified information with applications; and

(b) Compliance with specified recordkeeping and reporting requirements,

are not subject to the requirements of Chapter 35 of title 44, United States Code, including 44 U.S.C. 3507.

§ 981.158 Computation of time periods for filing documents.

Saturdays, Sundays and Federal Government holidays will be included in computing the time period allowed for filing any document under this Part, but when such time period expires on such a day, such time period will be extended to include the next following Federal Government work day. Also, with respect to documents filed with the Federal Government, filing periods expire at the close of business for the office specified on the day specified.

Subpart B—Information To Be Submitted With Application

§ 981.160 Why is this information required?

(a) *Information for NOAA.* The Act requires the Administrator to make a number of factual determinations with respect to issuance of a license. This subpart prescribes the information which the applicant must provide with the application. If additional information later becomes necessary to enable the Administrator to make those determinations, the Administrator will use the procedures in § 981.90 of this part to obtain it from the applicant.

(b) *Information for other Federal agencies and departments.* The Act requires the Administrator not to issue a license if it is determined that the applicant cannot or will not comply with applicable laws and regulations. This Subpart prescribes information which the applicant must provide with the application to enable the Administrator to make that determination. If additional information later becomes necessary to complete the application proceeding, the Administrator will use the procedures in § 981.90 of this part to obtain it from the applicant.

§ 981.170 Request for use of the Consolidated Application Review (CAR) process.

(a) *Request.* If the applicant wishes to have the CAR process used the application shall so indicate.

(b) *CAR team representative.* If the applicant requests use of the CAR process, the applicant shall designate a representative to the CAR team in his application.

§ 981.180 Information about the applicant and its affiliates.

(a) *General.* The following information on the applicant and its affiliates shall be provided by the applicant with the application:

(1) The name, mailing address, telephone number, citizenship, and the ownership interest in the applicant and its affiliates, of each person having any controlling interest in the applicant or its affiliates or any ownership interest in the applicant or its affiliates of greater than 5 per centum; and

(2) The name, address, and citizenship of any person with whom the applicant and its affiliates have made, or propose to make, a significant contract for the construction or operation of the OTEC facility or plantship, or for any major component of the OTEC facility or plantship, and a copy of such contract.

(b) *Proof of citizenship and authority* (1) If the applicant is a partnership or sole proprietorship, an affidavit from each partner or the proprietor, respectively, stating that the individual is a citizen of the United States of America.

(2) If the applicant is a corporation, one copy of its charter or instrument by which the corporation is formed and organized under general corporation laws, certified by the Secretary of State or other appropriate authority of the State in which incorporated, a copy of its by-laws certified by its Secretary or an Assistant Secretary, and an affidavit from its president, or holder of similar office, and each member of its board of directors stating the individual's citizenship.

(3) If the applicant is a Federal, State, or local government in the United States, or any entity of any such government, a copy of the laws authorizing the operations detailed in the application.

(4) If the applicant is an association or other entity, a copy of its charter or instrument by which the entity is organized or existing under the laws of the United States, or of any State and an affidavit from its principal executive officer, or holder of similar office, and from each member of its board of directors, stating the individual's citizenship.

(c) *Address for service of documents.* Each application shall contain the name, address and telephone number of a person upon whom service of a notice may be made if a formal hearing is to be held on the application and the name, address and telephone number of a person to whom documents not required to be served may be sent.

(d) *Technical competence.* The following information on the experience of the applicant shall be provided with the application:

(1) A description of the technical competence in offshore operations of the applicant and each consultant, naval architect, or marine engineering firm, if known, that will participate in the design of the OTEC facility or plantship, with particular emphasis on involvement in offshore construction, deployment of large structures, submarine electrical transmission cables, submarine pipelines, seabed foundations, mooring systems, and other experience that would bear on one's qualifications to participate in the construction or operation of an OTEC facility or plantship.

(2) A listing and abstract of each study relied upon by the applicant and a listing and abstract of each ongoing or completed study pertaining to OTEC facilities or plantships conducted by or for the applicant.

(e) *Finances and production.* The following information on the financial situation and production history and plans of the applicant and each of its affiliates shall be provided by the applicant with the application:

(1) The most recent annual financial statement of the applicant and each of its affiliates, including an income statement and a balance sheet, accompanied by an opinion of a certified public accountant;

(2) An estimate of construction costs, by phases;

(3) A detailed estimate of the cost of removal or at sea disposal of all marine components of the OTEC facility or plantship other than electrical transmission cables or pipelines lying below the seabed;

(4) A copy of every agreement or proposal of the applicant and each of its affiliates relating to the ownership, lease, charter, or operation of the OTEC facility or plantship or any of its components and to the financing of the construction or operation of the OTEC facility, plant, or plantship or component thereof, including those relating to production of electricity or other products, capital contributions, loans, guarantees, and commitments therefor; and

(5) From each applicant, and each affiliate of an applicant, engaged in the production of electricity or other product to be produced by the OTEC facility or plantship which is the subject of the application, for each of the three calendar years immediately prior to the date of application, its:

(i) Locations; and

(ii) Total U.S. and total worldwide:

(A) Gross and net production of electricity; and

(B) Production of products of the type which would be produced by the OTEC facility or plantship which is the subject of the application.

§ 981.190 General information on the OTEC facility or plantship.

The following general information shall be submitted with the application in the order specified in this section:

(a) The proposed physical size and location (for a plantship, a description of the area in which the plantship is intended to be operated) of the OTEC facility or plantship, and the intended capacity of such facility or plantship to produce electricity, fresh water, or other products, including an estimate of the total annual gross and net production of electricity or other products;

(b) A description of the thermodynamic cycle and working fluid to be employed by the OTEC facility or plantship;

(c) A description of any production, processing, refining, or manufacturing process which will be used to make a product;

(d) A description of the methods which will be used to deliver electricity, fresh water, or other product to shore;

(e) A general description of the major components of the OTEC facility or plantship; and any pipeline or electrical transmission system or other product transfer system associated with such OTEC facility or plantship;

(f) If construction and deployment is expected to proceed in phases, a description of each phase, including the anticipated date of completion for each phase;

(g) The intended daily volumes of warm and cold water flow through the OTEC facility or plantship;

(h) A description of the procedures to be used in constructing, operating, and maintaining the OTEC facility or plantship, including procedures to be used to control biofouling and to minimize the volume of any Federally permitted pollutant discharge from the OTEC facility or plantship;

(i) A description of the procedures to be used in constructing, operating, and maintaining the OTEC facility or plantship to prevent any unpermitted pollutant discharge; and

(j) An emergency pollutant discharge contingency plan which describes the equipment, training, procedures, and maintenance required to respond to or conduct cleanup of any unpermitted pollutant discharge from the OTEC facility or plantship. (Standards for such a plan and for review of the adequacy of such a plan will be determined by the Coast Guard).

§ 981.200 Requested duration of license.

The applicant shall submit with the application a statement of the requested duration of the license he is seeking, along with the economic, technical, or other basis for the requested duration.

§ 981.210 Compliance with other Federal laws and regulations.

(a) If the proposal of the applicant is subject to regulation under the cited authority, the information specified in this section shall be submitted with the application.

(b) *Clean Water Act.* The information required to be submitted to the Environmental Protection Agency to obtain a *National Pollutant Discharge Elimination System* (NPDES) permit under section 402 of the *Clean Water Act* (Pub. L. 92-500, as amended by Pub. L. 95-217 and Pub. L. 95-576; 33 U.S.C. 1251 *et seq.*). The procedures and information required for such submittals are set out in 33 CFR Part 122, 33 CFR Part 124, and 40 CFR 125.120 *et seq.* In addition, NPDES permits for discharges into marine waters are issued in compliance with guidelines developed by EPA under section 403(c) of the Clean Water Act. For the Ocean Discharge Criteria see 40 CFR Part 125, Subpart M (45 FR 65952; October 3, 1980).

(c) *Clean Water Act.* The information required to be submitted to the Corps of Engineers within the Department of the Army to obtain a *Permit for Discharges of Dredged or Fill Material into Waters of the United States* under section 404 of the *Clean Water Act* (Pub. L. 92-500, as amended by Pub. L. 95-217 and Pub. L. 95-576; 33 U.S.C. 1251 *et seq.*). The procedures and information required for such submittals are set out in 33 CFR Part 320, 33 CFR Part 323, and 33 CFR Part 325.

(d) *Marine Protection, Research, and Sanctuaries Act of 1972.* The information required to be submitted to the Corps of Engineers within the Department of the Army to obtain a *Permit for Ocean Dumping of Dredged Material* under section 103 of the *Marine Protection, Research, and Sanctuaries Act of 1972*, as amended (33 U.S.C. 1413). The procedures and information required for such submittals are set out in 33 CFR Part 320, 33 CFR Part 324, and 33 CFR Part 325.

(e) *River and Harbor Act of 1899.* The information required to be submitted to the Corps of Engineers within the Department of the Army to obtain a *Permit for Structures or Work in or Affecting Navigable Waters of the United States* under section 10 of the *River and Harbor Act of 1899*, 33 U.S.C. 403. The procedures and information required for such submittals are set out in 33 CFR Part 320, 33 CFR Part 322, and 33 CFR Part 325.

(f) *Endangered Species Act of 1973.* The information required to determine whether the activities of the OTEC facility or plantship are likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of their critical habitats, as determined under the *Endangered Species Act of 1973* (16 U.S.C. 1531 *et seq.*). For the lists of endangered species, see 50 CFR Parts 17 and 222; for the lists of threatened species, see 50 CFR Parts 17 and 227; for the lists of designated critical habitats, see 50 CFR Parts 17 and 226.

(g) *Coastal Zone Management Act of 1972.* The certification or certifications required to be submitted to NOAA under section 307(c) of the *Coastal Zone Management Act of 1972* (CZMA) (16

U.S.C. 1456(c)). The procedures and information required for such submittals are set out in 15 CFR Part 930.

(h) *Outer Continental Shelf Lands Act Amendments of 1978.* The information required to be submitted to the Corps of Engineers within the Department of the Army to obtain a *Permit for Artifical Islands, Installations, and Other Devices, Installed on the Outer Continental Shelf, which May Obstruct Navigation,* under section 4(e) of the *Outer Continental Shelf Lands Act* (16 U.S.C. 203(e)). The procedures and information required for such submittals are set out in 33 CFR Part 322.

(i) *Clear Air Act.* The information required to be submitted to a State or to the Environmental Protection Agency to determine compliance with the *Clean Air Act* (42 U.S.C. 7401 *et seq.*). The procedures and information required for such submittals are set out in 40 CFR Part 50–87.

(j) *Fish and Wildlife Coordination Act (FWCA).* Information to assist NOAA in complying with the consultation requirements of the FWCA (16 U.S.C. 661 *et seq.;* in particular, section 662), with a view to the conservation of fish and wildlife resources by planning and incorporating measures to prevent loss of and damage to such resources. NOAA strongly encourages each applicant to contact NOAA at the pre-application stage of the project, to facilitate early consultation with the National Marine Fisheries Service, the U.S. Fish and Wildlife Service and State agencies administering affected wildlife resources.

(k) *Additional Federal authorizations required.* All other applications for Federal authorizations required for ownership, construction, location, and operation of the proposed OTEC facility or plantship not listed elsewhere in this Part.

§ 981.220 OTEC site information.

(a) *General.* The following information on the proposed OTEC facility site or proposed OTEC plantship operating site(s), as appropriate, shall be submitted with an application.

(b) *Site plan.* Single-line drawings and descriptions showing the location and type of each major component and appurtenance of the proposed OTEC facility or plantship, including floating structures, fixed structures, electrical power transmission cables, aids to navigation, industrial process systems, offshore and onshore pipelines, electrical substations and switching stations. One of these drawings must be a large-scale nautical chart of the area in which the proposed OTEC facility or plantship would operate.

(c) *Existing human uses.* Single-line drawings of the marine area within five miles of the proposed site showing the nature and location of any cables, pipelines, offshore drilling or production platforms, aids to navigation, sewage outfalls, or other man-made structures and equipment. These drawings must also show the boundary lines and identification of each Outer Continental Shelf lease block, shipping lane, submarine transit lane, fishing ground, national defense restricted area, or other special area noted on navigation charts for the area covered by the drawings, or otherwise known to the applicant. The information required in §§ 981.260(a)(7) and (a)(8) of the part must also be included on these drawings.

(d) *Marine components.* A description of:

(1) The proposed size and location of:

(i) All fixed and floating structures associated with the OTEC facility or plantship;

(ii) In the case of a moored OTEC facility, watch circles;

(iii) Maneuvering areas;

(iv) Recommended ships' routing measures considered necessary or appropriate for the protection of the OTEC facility or plantship;

(v) Recommended anchorage areas, if any;

(vi) Recommended mooring area for support vessels;

(vii) Pipelines and cables within the marine site;

(2) The water depth throughout the proposed marine site.

(3) In the case of an OTEC facility, a reconnaissance hydrographic survey of the proposed marine site.

Note.—A requirement to submit an engineering hydrographic survey of the final marine site for an OTEC facility will be imposed as a license condition.

(e) *Soil data.* For an OTEC facility, an analysis of the general character and condition of the ocean bottom and sub-bottom strata throughout the marine site and along the path of any cold or warm water intake or discharge piping, electrical transmission cable, or pipeline to the shore, including an opinion by a registered professional engineer with appropriate expertise and training, concerning:

(1) The suitability of the ocean bottom and sub-bottom strata to accommodate the anticipated design load of each marine component that will be fixed to or supported on the ocean floor as evidenced by foundation tests, geo-hazard reports, and geo-technical reports; and

(2) The stability of the seabed when exposed to the environmental forces resulting from severe storms, or to lesser forces that continue for an extended period, including any history of accretion or erosion of the coast line in proximity to the marine site.

(f) *Onshore components.* A description of the size and location of major onshore components of the OTEC facility, including:

(1) Onshore electrical transmission cables or pipelines;

(2) Electrical substations;

(3) Switching stations;

(4) Electrical transmission lines;

(5) Storage facilities;

(6) Industrial plants; and

(7) Vessel on/off loading facilities.

§ 981.230 Operational information.

(a) Each applicant shall specify the wind, wave, and current conditions during which the licensee would initiate the following actions:

(1) Shutdown of electrical power or other product production operations.

(2) Prohibition on supply vessels or product transport vessels mooring to an OTEC facility or plantship.

(3) Shutdown of all operations and evacuation of the OTEC facility or plantship.

(b) Each application shall contain a description of the calculations and other information used to specify the conditions described in paragraph (a) of this section.

(c) Each application shall contain a description of the procedures to be followed in shutdown and evacuation of the facility or plantship under the conditions described in paragraph (a) of this section.

(d) Each application shall state the personnel capacity of the OTEC facility or plantship.

§ 981.240 Design information.

(a) The applicant shall submit the design information specified in this section with his application.

(b) *Major floating components data.*

(1) A description and preliminary design drawing of each major floating component, including any electrical transmission riser cable, product transfer system, cold and warm water intake and discharge structures, or cold water pipe suspension system if they are floating systems in whole or in part, along with any floating anchoring or securing structure.

(2) The design criteria to which each major floating component is to be designed and built.

(3) The design standards and codes to be used.

(4) The title of each recommended engineering practice to be followed.

(5) A description and the results of any design and evaluation studies performed by or for the applicant on a major floating component.

(6) A description of safety, lifesaving, and firefighting equipment to be used on each major floating component.

(c) *Major fixed marine components.*

(1) A description and preliminary design drawing of each major fixed marine component, including cold and warm water intake and discharge structures, if they are fixed marine components in whole or in part.

(2) The design criteria to which each major fixed marine component is to be designed and built.

(3) The design standards and codes to be used.

(4) The title of each recommended engineering practice to be followed.

(5) A description and the results of any design and evaluation studies performed by or for the applicant for any major fixed marine component and utilized in the development of the application.

(6) A description of safety, lifesaving, and firefighting equipment to be used on each major fixed marine component.

(d) *Major onshore components.*

(1) A description and preliminary design drawing of each major onshore component.

(2) A description and the results of any design and evaluation studies performed by or for the applicant for any major onshore component and used in development of the application.

(3) A description of the safety and firefighting equipment to be used in each major onshore component.

(e) *Offshore electrical transmission cable or pipeline components.*

(1) A description and preliminary design drawing of any submarine electrical transmission cable or pipeline, including size, capacity, length, depth and protective devices.

(2) The design criteria to which the submarine electrical transmission cable or pipeline is to be designed and built.

(3) The design standards and codes to be used.

(4) The title of each recommended engineering practice to be followed.

(5) A description of the manner in which all submerged or buried communications cables, electrical transmission cables, and pipelines will be crossed by the offshore submarine electrical transmission cable or pipeline.

(f) *Miscellaneous components data.*

(1) A description of the navigation safety equipment required under 33 CFR Part 164 for a plantship.

(2) A description of aids to navigation to be established on the OTEC facility in accordance with 33 CFR Part 64 and 33 CFR Part 66.

(3) A description of the proposed navigational lighting for the OTEC plantship in accordance with the International Regulations for Prevention of Collisions at Sea, 33 CFR Part 87.

(4) A description of the radio stations or other communications facilities and the proposed method of operation to serve the OTEC facility or plantship during construction and operation, including systems to communicate with transient shipping for safety at sea.

Note.—Federal Communications Commission applications for the OTEC facility or plantship may be submitted directly to the Federal Communications Commission when sufficient technical information is available to meet the rules of that agency. The holding of appropriate Federal Communications Commission licenses will be made a condition on each OTEC facility or plantship license.

(5) A description of plans and methods of operating vessels supplying, or transporting products from, the OTEC facility or plantship.

(6) Type, size and number of vessels to be used in supplying or transporting products from the OTEC facility or plantship.

(7) A description and exact location of any shore-based support facilities to be provided for vessels described in paragraphs (f)(5) and (f)(6) of this section.

§ 981.250 Construction and deployment procedures.

A description of the locations, methods and procedures to be used in constructing and deploying each major marine component of the OTEC facility or plantship must be submitted. This description must include an explanation of the method for emplacing any submarine electrical transmission cable.

§ 981.260 Environmental information.

(a) The following environmental information and assessments shall be provided with the application:

(1) A description of the area or areas of the ocean and their boundaries, in which the OTEC activities of the applicant might impact so as to significantly degrade the operation of another OTEC facility or plantship, and in which the potential operation of another OTEC facility or plantship might impact so as to significantly degade the OTEC operation proposed by the applicant;

(2) An assessment of the quantities, composition and potential for bioaccumulation or persistence of any pollutants which may be discharged into the water or atmosphere from the facility or plantship;

(3) An assessment of the potential transport of such pollutants by biological, physical or chemical processes;

(4) An assessment of the composition and vulnerability of the biological communities which may be affected by entrainment, impingement, or by such pollutants, including the presence of unique species or communities of species, the presence of species identified as endangered or threatened pursuant to the Endangered Species Act, the presence of species of marine mammals, or the presence of those species critical to the structure or function of the ecosystems, such as those important for the food chain;

(5) An assessment of the potential impacts on human health of such pollutants through direct and indirect pathways;

(6) An assessment of the importance of the receiving water area and atmosphere to the surrounding biological community, including the presence of spawning sites, nursery/forage areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of an organism;

(7) A description of special sites which might be impacted by the proposed OTEC operations including, but not limited to, estuarine or marine sanctuaries and refuges, parks, national and historic monuments, archeological resources, national seashores, wilderness areas and coral reefs, and an assessment of the potential significance of such impacts. The location of these sites must be included on the drawings required by § 981.220(c) of this part;

(8) A description of existing or potential recreational and commercial fishing areas, including finfishing and shellfishing areas, which might be significantly impacted by the proposed OTEC operation. The locations of these areas must be included on the drawings required by § 981.220(c) of this part;

(9) A description of expected meteorological and climatic conditions in the area(s) described in paragraph (a)(1) of this section, including estimates of the frequency and severity of extreme meteorological events;

(10) For an OTEC facility, a description of the seismological conditions at the proposed site, including estimates of the frequency and severity of extreme seismological events;

(11) A description of the physical oceanographic conditions in the area(s) described in paragraph (a)(1) of this

section, including surface and subsurface currents, density gradients and tides;

(12) A description of the environmental monitoring program proposed by the applicant to:

(i) Demonstrate compliance with applicable Federal, State, or other pertinent air and water quality standards;

(ii) Provide for early detection of potential releases of pollutants from the OTEC facility or plantship; and

(iii) Monitor the effects of cold and warm water intakes and of discharges from the OTEC facility or plantship on air, water, sediment, and biological quality. Note that numerical limits for conventional, non-conventional, and toxic pollutants for marine waters are identified in the Environmental Protection Agency publication *Quality Criteria for Water* (the "Red Book"), and in water quality criteria for toxic pollutants set out in 45 FR 79318–79370, November 28, 1980.

(b) A description and the results of any study or evaluation used by the applicant to develop the information and assessments required by this section must be submitted with the application.

Subpart C—License Application Review Procedures

§ 981.270 What is the license application review process?

This subpart describes the process which is used by NOAA to review an application for an OTEC license. The Act prescribes certain mandatory steps in the process and establishes deadlines for their completion. The mandatory steps in the license application review process are set out first in this Subpart in §§ 981.280 through 981.370. NOAA has also developed a voluntary Consoldiated Application Review (CAR) process which will be used by NOAA and, on a voluntary basis, by other involved Federal, State, and local government entities, to coordinate reviews associated with all Federal, State, and local government authorizations required for ownership, construction, and operation of an OTEC facility or plantship. The steps in the CAR process are set out in this Subpart after the mandatory review procedures, beginning at § 981.380.

§ 981.280 NOAA review for completeness.

(a) Within 21 days after the receipt of an application, the Administrator will determine whether the application appears to contain all of the information required by Subpart B of this part. In making this determination the Administrator will consult with other involved Federal agencies and departments.

(b) If the Administrator determines that such information appears to be contained in the application, the Administrator will take the actions under § 981.290 of this part.

(c) If the Administrator determines that all of the required information does not appear to be contained in the application, the Administrator will notify the applicant in accordance with § 981.90 of this part. The Administrator may decide to take no further action with respect to processing the application until such deficiencies have been remedied.

(d) The time limitations of this Subpart do not begin to run until the date on which the Administrator determines under paragraph (b) of this section that the application appears to be complete.

§ 981.290 Publication of notice of application; contents of notice; call for additional applications for OTEC facilities.

(a) Not later than 5 days after determining under § 981.280 of this part that an application appears to be complete, the Administrator will publish notice of receipt of the application, together with a summary of the plans specified in the application, in the Federal Register.

(b) In the case of an application for an OTEC facility the published notice also will include:

(1) A description of the designated application area encompassing the proposed OTEC facility, and within which:

(i) The OTEC activities proposed by the applicant might impact so as to significantly degrade the operation of another OTEC facility; and

(ii) The potential operation of another OTEC facility might impact so as to significantly degrade the OTEC operation proposed by the applicant;

(2) A call for submission of any other applications for licenses for the ownership, construction, and operation of an OTEC facility within the designated application area.

(c) Any person intending to file an application referred to in paragraph (b)(2) of this section shall submit a notice of intent to file an application to the Administrator not later than 60 days after the publication of notice pursuant to paragraph (a) of this section, and shall submit the completed application no later than 90 days after publication of such notice. No application for a license for the ownership, construction, and operation of an OTEC facility within the designated application area for which a notice of intent to file was received after such 60-day period, or which is received after such 90-day period has elapsed, shall be considered until action has been completed on all timely filed applications pending with respect to such application area.

(d) Not later than 5 days after determining under § 981.280 of this part that an application submitted in accordance with paragraph (c) of this section appears to be complete, the Administrator will publish notice of receipt of the application, together with a summary of the plans specified in the application, in the Federal Register. The notice will also contain a description of the application area described in the original notice published by the Administrator for that area under paragraph (b) of this section.

(e) If additional applications for a designated application area are received pursuant to paragraph (c) of this section, the original applicant and all subsequent applicants for licenses in the designated application area shall submit the following information not later than 30 days after expiration of the 90-day period provided for in paragraph (c) of this section:

(1) Projections or estimates of the unit cost to the end user of produced electricity or product during the first, third, sixth, ninth, etc., year of operation throughout the requested duration of the OTEC facility license; and

(2) An estimate of the amount of fuel or other raw materials which would be saved or made available for other uses because of the operation of the OTEC facility, projected on an annual basis through the expected useful life of the OTEC facility.

The estimates provided under this paragraph should be supported by an analysis of the specific markets in which the OTEC facility would compete.

§ 981.300 Other Federal agencies and departments.

(a) At the time notice of any application is published pursuant to § 981.290 of this part, the Administrator will forward a copy of such application to those Federal agencies and departments with jurisdiction over any aspect of OTEC facility or plantship ownership, construction, or operation for review, comment, and recommendation as to license conditions and for such other action as may be required by law. The Federal agencies involved shall include, but are not limited to, the Environmental Protection Agency and the Departments of Energy, Transportation, State, the Interior, Justice and Defense.

(b) Each Federal agency or department involved (other than the Department of Justice, which shall conduct its review in accordance with § 981.320 of this part) shall review the application and, based upon legal considerations within its area of responsibility, recommend to the Administrator the approval, approval subject to conditions, or disapproval of the application not later than 45 days after public hearings are concluded pursuant to this part. In any case in which an agency or department recommends disapproval, it shall set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall notify the Administrator of the manner in which the application may be amended or the license conditioned so as to bring it into compliance with the law or regulation involved.

(c) In addition to the requirements of paragraph (b) of this section, each Federal agency or department is strongly encouraged to conduct its review of the application and to make its initial or tentative recommendation of approval or denial to the Administrator before public hearings begin under § 981.340 of this part, so that the public hearings can address those tentative recommendations. The NOAA Administrator will also attempt to make his preliminary views on the application and possible license terms and conditions available before the first public hearing is held under § 981.340 of this part.

§ 981.310 EIS for each application.

(a) *General.* (1) The issuance of any license for ownership, construction, and operation of an OTEC facility or plantship will be deemed to be a major Federal action significantly affecting the quality of the human environment for purposes of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)).

(2) Whether other actions concerning a license, such as transfer or renewal of the license, require full EIS procedures will be determined on a case-by-case basis in accordance with NEPA.

(b) *NOAA as lead agency.* For all timely applications covering proposed OTEC facilities in a single application area, and for each application relating to a proposed OTEC plantship, the Administrator will, pursuant to section 102(2)(C) of NEPA and in cooperation with other involved Federal agencies and departments, prepare a single EIS which will fulfill the requirements of all Federal agencies in carrying out their responsibilities pursuant to the Act to prepare an EIS.

§ 981.320 Antitrust review.

(a) Promptly after determining under § 981.280 of this part that an application appears to be complete, the Administrator will transmit to the Attorney General a complete copy of such application.

(b) Within 90 days after receipt of the application under § 981.300(a) of this part, the Attorney General shall conduct such antitrust review of the application as he deems appropriate, and submit to the Administrator, in writing, any advice or recommendations he deems advisable to avoid any action upon such application by the Administrator which would create a situation inconsistent with the antitrust laws.

(c) The Administrator will not issue the license during the 90-day period, except upon written confirmation by the Attorney General that he does not intend to submit any further advice or recommendation on the application during such period.

(d) If the Attorney General fails to file such views within the 90-day period, the Administrator will proceed as if such views had been received.

(e) If the Administrator decides to issue the license even though the Attorney General has recommended against it, or to issue the license without terms and/or conditions recommended by the Attorney General, the Administrator will inform the Attorney General in writing of the reasons for such a decision.

§ 981.330 Adjacent coastal States.

(a) *Automatic designation.* (1) The Administrator will designate as an "adjacent coastal State" any coastal State:

(i) Which would be directly connected by electric transmission cable or pipeline to an OTEC facility as proposed in an application;

(ii) In whose waters any part of such proposed OTEC facility would be located; or

(iii) In whose waters an OTEC plantship would be operated as proposed in an application.

(2) The Administrator will announce the designation of an adjacent coastal State under paragraph (a)(1) of this section in the notice of application published in the **Federal Register** under § 981.290 of this part.

(b) *Other designation.* (1) The Administrator will, upon request of a State, designate such State as an "adjacent coastal State" if he determines:

(i) That there is a risk of damage to the coastal environment of such State equal to or greater than the risk posed to a State required to be designated as an "adjacent coastal State" by paragraph (a)(1) of this section, or

(ii) that the proposed OTEC activities of the applicant are likely to impact at possible locations for OTEC facilities which could reasonably be expected to be directly connected by electric transmission cable or pipeline to such State, so as to significantly degrade OTEC operations at such possible locations.

(2) Any State requesting designation as an "adjacent coastal State" under paragraph (b)(1) of this section must make its request to the Administrator, in writing, not later than the 14th day after the date of publication of notice of application for a proposed OTEC facility or plantship in the **Federal Register** under § 981.290 of this part. The request must be signed by the Governor of the requesting State, and must specify in detail the reasons why the State believes the Administrator should make a determination under paragraph (b)(1) of this section.

(3) The Administrator will make any designation required by paragraph (b)(1) of this section not later than the 45th day after the date he receives such a request from a State.

(c) *Transmittal of application; "Federal Register" notice.* Not later than 5 days after the designation of an adjacent coastal State pursuant to this section, the Administrator will transmit a complete copy of the application to the Governor of such State, and publish notice of the designation in the **Federal Register**.

(d) *Consultation with adjacent coastal States with approved Coastal Zone Management programs on license conditions.*

(1) The Administrator will not issue a license without consultation with the Governor of each adjacent coastal State which has an approved Coastal Zone Management (CZM) program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et. seq.*).

(2)(i) If the Governor of a State referred to in paragraph (d)(1) of this section determines that an application is inadequate or inconsistent in some respect with the State's CZM program or other applicable State or local laws, the Governor may so notify the Administrator, including the following information:

(A) The part of the State's CZM program, or the other applicable State or local law, with respect to which the

application is inadequate or inconsistent;

(B) The manner in which or reason why the application is inadequate or inconsistent; and

(C) How the application may be amended, or the license conditioned, so as to make activities conducted under the license consistent with the State's CZM program and other applicable State and local laws.

(ii) Any notice given to the Administrator by a Governor under paragraph (d)(2)(i) of this section must be in writing, and must contain the information described in paragraphs (d)(2)(i) (A) through (C) of this section.

(3) If the Governor of a State referred to in paragraph (d)(1) of this section has not transmitted his approval, or disapproval under paragraph (d)(2) of this section, to the Administrator by the 45th day after public hearings on the application are concluded under this part, his approval shall be conclusively presumed.

(4) Upon timely receipt of notice from a Governor under paragraph (d)(2) of this section, the Administrator will condition any license granted to make activities conducted under the license consistent with the State's CZM program and other applicable State and local laws. If a license cannot be so conditioned, the Administrator will not issue the license.

(e) *Consideration of views of other States.* Any adjacent coastal State which does not have an approved CZM program in good standing, and any other interested State, will have the opportunity to make its views known in writing to, and to have them given full consideration by, the Administrator regarding any application for a license for the ownership, location, construction, or operation of an OTEC facility or plantship.

(f) *Tentative recommendations.* In addition to the provisions of paragraphs (d) and (e) of this section, each adjacent coastal State is strongly encouraged to conduct its review of the application and to make its initial or tentative recommendations to the Administrator before public hearings begin under § 981.340 of this part, so that the public hearings can address those tentative recommendations.

§ 981.340 Informal public hearings on license application.

(a) *General.* (1) A license may be issued only after public notice, opportunity for comment, and public hearings in accordance with this part.

(2) Hearings held under this part will be consolidated insofar as practicable with hearings held by other agencies.

(b) *Multiple applications for OTEC facilities.* If two or more license applications for OTEC facilities have been filed for the same designated application area, the Administrator will consolidate the hearings on the applications.

(c) *Location.* With respect to each license application, at least one public hearing will be held in the District of Columbia and in any adjacent coastal State in which an OTEC facility which is the subject of the application is proposed to be located or to which it would be directly connected by pipeline or electric transmission cable.

(d) *Notice of public hearing.* After all applications in a proceeding are filed, the Administrator will publish a notice of public hearing in the **Federal Register** and mail or deliver a copy of the notice to any person who requests it and to each applicant and to the Governor of each adjacent coastal State. Each notice will list the applicant(s), state the time and place for the hearing, and describe any factual issues in the proceeding. A notice may prescribe procedural matters to govern the hearing, may designate the presiding officer assigned by the Administrator for the hearing, and may contain such other information as the Administrator determines may facilitate the conduct of the hearing.

(e) *Participation by interested persons.* Interested persons may attend any public hearing, present relevant material at the hearing, and submit written material and oral statements during the hearing at a time and in a manner determined by the presiding officer.

(f) *Report of public hearing.* Within 21 days after a public hearing is completed, the presiding officer will prepare a report of the hearing. The report at a minimum will contain a summary of the materials presented and factual issues raised at the hearing and will have attached to it a transcript of the hearing and all relevant written materials submitted to the presiding officer.

§ 981.350 Formal hearings on material factual issues.

(a) If, on the basis of the hearing report required by § 981.340 of this part, the Administrator determines that there exists one or more specific and material factual issues which must be resolved by a formal evidentiary hearing, the Administrator will issue a notice of formal hearing under § 981.560(d) of this part.

(b) If the Administrator determines under paragraph (a) of this section that a formal hearing is necessary, at least one adjudicatory hearing will be held in the District of Columbia in accordance with 5 U.S.C. 554 and the procedures set forth in Subpart E of this Part. The record developed in any such adjudicatory hearing will be part of the basis for the Administrator's decision to approve or deny a license.

§ 981.360 Timely conclusion of public hearings.

(a) All public hearings on all applications with respect to OTEC facilities for any designated application area will be concluded not later than 240 days after notice of the initial application has been published under § 981.290 of this part.

(b) All public hearings on applications with respect to OTEC plantships will be concluded not later than 240 days after notice of the application has been published pursuant to § 981.290 of this part.

(c) Upon conclusion of all public hearings with respect to an OTEC license application under this part, the Administrator will publish a notice in the **Federal Register** stating that all such public hearings have been concluded and specifying the date by which recommendations or notice must be submitted under §§ 981.300(b) and 981.330(d)(3) of this part.

§ 981.370 Timely issuance of draft and final EIS's on the application.

(a) *Draft EIS.* Each draft EIS relating to proposed OTEC facilities or plantships will be prepared and issued within 180 days after notice of the initial application has been published pursuant to § 981.290 of this part.

(b) *Final EIS.* Each final EIS shall be issued not later than 90 days following the date on which public hearings are concluded pursuant to § 981.360 of this part.

(c) *Extension of time periods.* The Administrator may extend the deadline specified in paragraphs (a) and (b) of this section for issuance of a specific draft or final EIS to a later specified date if the Administrator notifies the applicant in writing and describes the good cause for such extension.

§ 981.380 Steps in the voluntary Consolidated Application Review (CAR) process.

(a) The voluntary CAR process, which supplements the preceding mandatory steps in this subpart, includes the following procedures:

(1) Early designation of a representative from each participating Federal, State, and local government entity, as well as each OTEC license applicant, to serve as members of the Consolidated Application Review (CAR) team;

(2) Development and signing of a Joint Agreement among the participating Federal, State, and local government entities and each applicant. The Joint Agreement identifies the members of the CAR team, details the regulatory and review responsibilities of each participating government agency having jurisdiction over any aspect of the construction or operation of OTEC facilities or plantships, and outlines the responsibilities of each applicant in the CAR process;

(3) Conducting an inter-agency meeting with all members of the CAR team which includes a briefing by each applicant on the details of each proposed OTEC facility or plantship, and a briefing by the government members on the procedures to be used in processing all necessary permits, authorizations, and approvals; and

(4) Implementation of the CAR schedule, including completion of required regulatory reviews, conduct of necessary public hearings, preparation of an Environmental Impact Statement, and other CAR team activities necessary to ensure close coordination of the OTEC license review process.

§ 981.390 Voluntary nature of the CAR process.

(a) *Applicant.* Participation by each applicant in the CAR process is voluntary. If an applicant desires to have the application processed by the CAR process the application shall so indicate and shall contain a designation of a CAR team representative.

(b) *Other Federal, State, and local government entities.* Participation by other Federal, State, and local government entities in the CAR process is voluntary. If an applicant indicates a desire to use the CAR process, NOAA will contact other Federal, State, and local government entities with expertise concerning, or jurisdiction over, any aspect of the construction or operation of the OTEC facility or plantship proposed by the applicant and invite them to designate a representative to serve on the CAR team for that application.

(c) *Other application review agreements.* Agreements other than the Joint Agreement may, at the option of the affected parties, be negotiated between any applicant and individual regulatory agencies, or between regulatory agencies, regarding any aspect of the regulatory reviews necessary pursuant to any government permit, license, or authorization required for construction or operation of the OTEC facility or plantship which is the subject of the application. Such agreements may be negotiated before or after an application for an OTEC license is submitted to NOAA. Such agreements will not be affected by an applicant's later decision to use the CAR process.

§ 981.400 Effect of Joint Agreement on authorities.

Nothing in the Joint Agreement developed by the CAR team shall abrogate the statutory, regulatory, or administrative responsibilities and rights of any party, agency, or jurisdiction. The CAR agreement is voluntary, and all parties will, in good faith, work in a cooperative and coordinated fashion to carry out the responsibilities stated therein.

§ 981.410 Request for designation of Federal CAR team members.

Not later than the time the Administrator forwards copies of the application to other Federal agencies and departments pursuant to § 981.300 of this part, the Administrator will request that each such agency and department designate a representative to serve on the CAR team for the application, if the applicant has requested that the CAR process be used for application review. Such Federal agencies and departments will be requested to make CAR team member designations within 14 days of receipt of the Administrator's request.

§ 981.420 Request for designation of State and local CAR team members.

(a) *State members.* Not later than the time the Administrator forwards copies of the application to designated adjacent coastal States pursuant to § 981.330 of this part, the Administrator will request that each such adjacent coastal State designate a representative to serve on the CAR team for the application, if the applicant has requested that the CAR process be used for review of the application. Such designated adjacent coastal States will be requested to make CAR team member designations within 14 days of receipt of the Administrator's request.

(b) *Local government members.* The request from the Administrator pursuant to paragraph (a) of this section will include a request that the designated adjacent coastal State coordinate with affected local government entities within such State to assist such entities in designating CAR team members to serve on the CAR team for the application. Such designated adjacent coastal States will be requested to forward local government CAR team member designations to the Administrator within 14 days of receipt of the Administrator's request.

§ 981.430 Development of Joint Agreement by CAR team.

(a) *Schedule.* Within 45 days after all members of the CAR team for the application are designated pursuant to this part, the CAR team will develop and sign a Joint Agreement among the participants.

(b) *Content.* The Joint Agreement will include, as a minimum:

(1) An identification of all members of the CAR team;

(2) A statement of the regulatory and review responsibilities of each government entity represented on the CAR team;

(3) A statement of the responsibilities of the representative of each applicant during the CAR process to be conducted on the application;

(4) A schedule of meetings, hearings, and decisions which must be completed during the CAR process; and

(5) A brief description of the OTEC facility or plantship proposal which is the subject of the application.

(c) *Availability.* After the Joint Agreement is completed and signed by CAR team participants, it will be listed on the docket and made a part of the record of the application proceeding in accordance with § 981.140 of this part. The Joint Agreement will then be available for public inspection and copying in accordance with § 981.150 of this part.

§ 981.440 Inter-agency CAR team meeting.

(a) *Schedule.* After completion of the Joint Agreement and prior to any public hearing on the application required by the Act, the CAR team will hold an initial public meeting. If practicable, the meeting will be held in an adjacent coastal State designated as such under § 981.330 of this part.

(b) *Content.* The inter-agency CAR team meeting will consist of a briefing by each applicant on the details of the proposed OTEC facility or plantship and briefings by each government member of the CAR team on the procedures to be used in processing all necessary permits, authorizations, and approvals.

(c) *Public participation.* Interested persons may attend the inter-agency CAR team meeting, present relevant material, and submit written and oral statements at a time determined by the presiding officer.

§ 981.450 Implementation of the CAR schedule.

(a) *Cooperation.* All members of the CAR team will, in good faith, work in a cooperative and coordinated fashion to address the responsibilities stated in the Joint Agreement and to assure that the

schedule in the Joint Agreement is adhered to.

(b) *Delays.* All parties to the Joint Agreement will make good faith efforts to adhere to the schedule agreed to therein. However, if unavoidable delays occur in submittal and review of information during the CAR process, the CAR team members will revise the Joint Agreement schedule accordingly. A copy of any such revised schedule will be listed in the docket and made part of the record of the application proceeding.

Subpart D—Criteria for Approval or Denial of Application and for Establishment of License Terms and Conditions; Renewal, Transfer, Suspension, Revocation, Termination, Relinquishment, and Surrender

§ 981.460 Timely approval or denial of application for a license and issuance of a license.

(a) The Administrator will approve or deny any timely filed application for a license for ownership, construction, and operation of an OTEC facility for a designated application area not later than 90 days after public hearings on the applications for that application area are concluded pursuant to § 981.360 of this part.

(b) The Administrator will approve or deny an application for a license for ownership, construction, and operation of an OTEC plantship not later than 90 days after the public hearings on the application are concluded pursuant to § 981.360 of this part.

(c) If an application is approved, the Administrator will issue a license to the applicant not later than 30 days after approval of the application, provided the application fee has been paid in accordance with § 981.130 of this part.

§ 981.470 Criteria for approval or denial.

(a) The Administrator may issue a license in accordance with the provisions of this part unless:

(1) The Administrator determines that the applicant cannot or will not comply with applicable laws, regulations, and license terms and conditions;

(2) The Administrator determines that the construction and operation of the OTEC facility or plantship will not be in the national interest and consistent with national security and other national policy goals and objectives, including energy self-sufficiency and environmental quality;

(3) The Administrator determines, after consultation with the Secretary of the department in which the Coast Guard is operating, that the OTEC facility or plantship will not be operated with reasonable regard to the freedom of navigation or other reasonable uses of the high seas and authorized uses of the Continental Shelf, as defined by United States law, treaty, convention, or customary international law;

(4) The Administrator has been informed, within 45 days after the conclusion of public hearings on that application, or on multiple applications for OTEC facilities for the designated application area, by the Administrator of the Environmental Protection Agency that the OTEC facility or plantship will not conform with all applicable provisions of any law for which EPA has regulatory authority;

(5) The Administrator has received the opinion of the Attorney General, pursuant to § 981.320 of this part, stating that issuance of the license would create a situation in violation of the antitrust laws, or the 90-day period provided in § 981.320 of this part has not expired;

(6) The Administrator has consulted with the Secretary of Energy, the Secretary of Transportation, the Secretary of State, the Secretary of the Interior, and the Secretary of Defense, to determine their views on the adequacy of the application, and its effect on programs within their respective jurisdictions and determines on the basis thereof that the application for a license is inadequate;

(7) The proposed OTEC facility or plantship will not be documented under the laws of the United States;

(8) The applicant has not agreed to the condition that no vessel may be used for the transportation to the United States of things produced, processed, refined, or manufactured at the OTEC facility or plantship unless such vessel is documented under the laws of the United States;

(9) When the license is for an OTEC facility, the Administrator determines that the facility, including any submarine electric transmission cables and equipment or pipelines which are components of the facility, will not be located and designed so as to minimize interference with other uses of the high seas or the Continental Shelf, including cables or pipelines already in position on or in the seabed and the possibility of their repair;

(10) The Governor of any adjacent coastal State with an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*) notifies the Administrator under § 981.330(d) of this part that the application is inadequate or inconsistent with respect to programs within his jurisdiction and the license cannot be conditioned as described in § 981.330(d)(4) of this part;

(11) When the license is for an OTEC facility, the Administrator determines that the operations of the facility are expected to impact so as to significantly degrade the operations of any other OTEC facility already licensed or operating, without the consent of its owner;

(12) When the license is for an OTEC facility, the Administrator determines that the operations of the facility are expected to impact so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation, unless the Secretary of State approves such impact after consultation with such nation;

(13) When the license is for an OTEC plantship, the Administrator determines that the applicant has not provided adequate assurance that the plantship will be operated in such a way as to prevent its operations from impacting so as to significantly degrade the operation of any other OTEC facility or plantship without the consent of its owner, and from impacting so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation unless the Secretary of State approves such impact after consultation with such nation;

(14) If a regulation has been adopted which places an upper limit on the number or total capacity of OTEC facilities or plantships to be licensed under this part for simultaneous operation, either overall or within specific geographic areas, the Administrator determines that issuance of the license will cause such upper limit to be exceeded;

(15) The Administrator determines that the person to whom the license would be issued is not a United States citizen; or

(16) The Administrator cannot insure that activities authorized by the license are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat of such species, unless an appropriate exemption has been granted under section 7(h) of the Endangered Species Act (16 U.S.C. 1536(h)).

§ 981.480 Multiple applications.

(a) In the event more than one application for a license for ownership, construction, and operation of an OTEC facility is submitted for the same designed application area, the Administrator will make decisions on license applications in the order in

which they were submitted, unless the Administrator determines that one or a specific combination of the proposed facilities clearly best serves the national interest.

(b) In determining whether any one or a specific combination of the proposed OTEC facilities clearly best serves the national interest, the Administrator, in consultation with the Secretary of Energy, will consider the following factors:

(1) The goal of making the greatest possible use of ocean thermal energy conversion by installing the largest capacity practicable in each application area;

(2) The amount of net energy impact of each of the proposed OTEC facilities;

(3) The degree to which the proposed OTEC facilities will affect the environment;

(4) Any significant differences between anticipated dates of commencement of operation of the proposed OTEC facilities; and

(5) Any differences in costs of construction and operation of the proposed OTEC facilities, to the extent that such differentials may significantly affect the ultimate cost of energy or products to the consumer.

§ 981.490 Condition precedent to issuance of license: Compliance with conditions and prior approval of changes.

(a) *General.* No license will be issued under this Part unless the prospective licensee first agrees in writing that:

(1) There will be no substantial change from the plans, operational systems, and methods, procedures, and safeguards set forth in his application, as approved, without prior approval in writing from the Administrator;

(2) There will be no change in the:

(i) Ownership of the licensee; or

(ii) Citizenship of the president or other executive officer or the chairman of the board of directors, or holder of similar office, of any member of the board of directors, of the licensee; without prior reporting, in writing, to the Administrator; and

(3) The prospective licensee will comply with license terms and conditions the Administrator may prescribe in accordance with the provisions of this part.

(b) *Emergencies.* In case of an emergency posing an imminent and substantial threat of harm to the OTEC facility or plantship, to human life, or to the environment, the licensee is not required to obtain written approval from the Administrator before making a substantial change referred to in paragraph (a)(1) of this section. If circumstances allow, the licensee should seek oral approval from the Administrator before making a substantial change. The licensee must immediately notify the Administrator, orally or in writing, of each substantial change made.

§ 981.500 Contents of license.

(a) Each license issued will contain, among other information, the following:

(1) The name and number or other identification of the OTEC facility or plantship;

(2) The name of the person to whom the license is issued;

(3) If different from the person to whom the license is issued, the name(s) of the owner and operator of the OTEC facility or plantship; and

(4) Terms and conditions on the ownership, construction, location, and operation of the OTEC facility or plantship to which the license is subject pursuant to § 981.520 of this part.

§ 981.510 Duration of licenses and renewals.

(a) *Original license.* Each license issued under this Part will be for such period of years as the Administrator may specify, but not exceeding 25 years.

(b) *Renewals.* Each renewal issued under this Part will be for such period of years as the Administrator may specify, but not exceeding 10 years.

§ 981.520 Terms and conditions of a license.

(a) *General.* Each license issued for an OTEC facility or plantship will contain such terms and conditions on the ownership, construction, location, and operation of the facility or plantship as specified in this section and such other terms and conditions as the Administrator may prescribe as necessary to carry out the provisions of the Act and this part, or which are required by any Federal department or agency pursuant to the terms of the Act and this part.

(b) *Disposal or removal of components of OTEC facility or plantship.* The Administrator will establish as license conditions such bonding requirements or other assurances as he deems necessary to assure that, upon the revocation, termination, relinquishment, or surrender of a license, the licensee will dispose of or remove all components of the OTEC facility or plantship as directed by the Administrator. The requirement to remove or dispose of all components may be waived by the Administrator if:

(1) In the case of components another applicant or licensee requests to use, the Administrator has not yet reached a decision on the request for continued use of the components; or

(2) In the case of components lying on or in the seabed, the Administrator finds that such removal is not otherwise necessary and that the remaining components do not constitute any threat to the environment, navigation, fishing, or other uses of the seabed.

(c) *Consistency with programs of an adjacent coastal State.* If the Governor of any adjacent coastal State which has an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*), gives timely notice to the Administrator under § 981.330(d) of this part that an application is inadequate or inconsistent with the State's coastal zone management program or other applicable State or local laws, the Administrator will condition any license granted to make activities conducted under the license consistent with the State's coastal zone management program and other applicable State and local laws.

(d) *Prevention of interference with other uses of the high seas.* Each license will include such conditions as the Administrator may determine to be necessary and appropriate to ensure that construction and operation of the OTEC facility or plantship are conducted with reasonable regard for navigation, fishing, energy production, scientific research, or other uses of the high seas, either by citizens of the United States or by other nations in their exercise of the freedoms of the high seas as recognized under the Convention on the High Seas and the general principles of international law.

(e) *Discharge impacts.*

(1) Each license will include such conditions as the Administrator deems necessary to ensure that discharges from the OTEC facility or plantship will not:

(i) Significantly degrade the operation of another OTEC facility or plantship, or

(ii) Create a significant adverse effect on the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation.

(f) *Additional license condition for OTEC plantships.* Each license issued for an OTEC plantship will contain a condition requiring that the licensee comply with such regulations concerning movement and navigation of OTEC plantships as the Coast Guard may issue under 109(c) of the Act.

(g) *Monitoring of license's activities.* Each license will contain terms or conditions requiring the licensee:

(1) To allow the Administrator to place appropriate Federal officers or employees aboard the OTEC facility or plantship to which the license applies, at such times and to such extent as the Administrator deems reasonable and necessary to assess compliance with any terms, conditions, or regulations applicable to the license, and to report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply;

(2) To cooperate with such officers and employees in the performance of monitoring functions; and

(3) To monitor the environmental effects of the operation of the OTEC facility or plantship in accordance with those terms and conditions.

(h) *Diligence.* Each license will contain a condition that the licensee diligently pursue the construction and operation of the OTEC facility or plantship to which the license applies, as determined by the Administrator's estimate of a reasonable schedule for construction and operation, based on information submitted with the application. The diligence condition established by the Administrator will allow for reasonable delay resulting from unforeseen circumstances. If the Administrator determines that a licensee is not pursuing diligently the construction and operation of the OTEC facility or plantship to which the license applies, or that the project has apparently been abandoned, the Administrator will cause proceedings to be instituted under section 111 of the Act to terminate the license.

(i) *Reports and records.* Each license will contain a condition that the licensee keep such records and report periodically to the Administrator such information as the Administrator finds to be necessary and appropriate:

(1) To assess compliance with diligence conditions established under paragraph (h) of this section;

(2) To assess environmental impacts of the OTEC operations of the licensee and to develop mitigation methods; and

(3) To comply with the requirements of Federal law and regulation.

(j) *U.S.-flag transportation vessels.* Each license will contain a condition that no vessel may be used for the transportation to the United States of things produced, processed, refined, or manufactured at the OTEC facility or plantship unless such transportation vessel is documented under the laws of the United States.

(k) *Foreign-flag vessels.* Each license will contain a condition that, except in a situation involving force majeure, the licensee will not permit a vessel, registered in or flying the flag of a foreign state, to call at, load or unload cargo at, or otherwise utilize the facility or plantship which is the subject of the license unless:

(1) The foreign state involved has agreed, by specific agreement with the United States, to recognize the jurisdiction of the United States over the vessel and its personnel while the vessel is located within any safety zone around the facility or plantship established by the Secretary of the department in which the Coast Guard is operating, pursuant to section 108(d) of the Act; and

(2) The vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such safety zone.

(l) *Compliance with other Federal law.* Each license may contain conditions imposed by the Administrator as necessary to assure the compliance of activities conducted under the license with other Federal laws and regulations. Such conditions will be based upon the review of and comment upon the application as conducted by Federal agencies and departments under Subpart C of this Part.

§ 981.525 Review, modification and revision of license terms and conditions.

(a) *NOAA review.* Periodically, at intervals not to exceed 3 years, the Administrator will conduct a review of each licensed OTEC facility or plantship operation in conjunction with the licensee to determine the need, if any, for modification of license terms and conditions.

(b) *Modification.* As the result of a review conducted under paragraph (a) of this section or at any other time, the Administrator, after consultation with interested Federal and State departments and agencies and the licensee, and after an opportunity for public comment, may modify any term or condition in a license consistent with the purposes of the Act and this Part.

(c) *Revision.*

(1) At any time during the term of a license, the licensee may submit to the Administrator a request for a revision of a license.

(2) The Administrator will approve such requests for a revision upon a finding in writing that the license with such revision would continue to meet the requirements of the Act and this Part.

(3) A change which would require a request to and approval by the Administrator as a revision is any change:

(i) Which would have significance for the findings contained in § 981.470(a) which would permit the Administrator to refuse to issue a license; or

(ii) Which would result in ownership, construction, location or operation of an OTEC facility or plantship contrary to existing terms and conditions in the license.

(d) *Public notice and opportunity to comment.* The Administrator will publish in the **Federal Register** notice of each proposed modification, and of each request for revision, of a license term or condition. Interested persons will be allowed at least 30 days after publication of the notice to submit written comments to the Administrator. On a case-by-case basis, the Administrator will determine whether to provide additional public participation procedures, such as conducting an informal public hearing in a potentially affected adjacent coastal State.

(e) *Notice to the licensee and to Federal agencies and adjacent coastal States.*

(1) The Administrator will issue written notice of each proposed modification, and of each proposed revision, of a license term or condition, to:

(i) The licensee;

(ii) Each Federal department or agency with jurisdiction over any aspect of the ownership, construction, location, or operation of the OTEC facility or plantship, which aspect may be affected by the proposed modification or revision; and

(iii) The Governor of each adjacent coastal State designated with respect to the OTEC facility or plantship involved.

(2) Each recipient of the notice may submit to the Administrator such written comments or recommendations regarding the proposed modification or revision as the recipient deems appropriate. Each Federal or State department or agency also may take such actions as may be required by law. If a Federal or State department or agency recommends that the proposed modification or revision not be approved, it shall set forth in detail:

(i) The manner in which the proposed modification or revision does not comply with any law or regulation within its area of responsibility; and

(ii) The manner in which the proposed modification or revision may be amended so as to bring it into compliance with the law or regulation involved.

(3) Each recipient of the notice issued under paragraph (e)(1) of this section

will be allowed 30 days from the date of issuance of that notice, or until the last day of the public comment period allowed under paragraph (d) of this section, whichever time period extends longer, in which to submit written comments and recommendations to the Administrator.

(f) *Initial decision.*

(1) After the close of the opportunity for comment provided in paragraphs (d) and (e) of this section, the Administrator will initially approve or disapprove the proposed modification or revision.

(2) The Administrator will publish notice of the initial decision in the **Federal Register** and provide written notice of the initial decision to the licensee and to each Federal department and agency, and to the Governor of each adjacent coastal State, to which notice was issued under paragraph (e).

(g) *Acceptance or objection by licensee.*

(1) The licensee will be deemed conclusively to have accepted the initial decision of the Administrator, if the licensee does not notify the Administrator, within 30 days after issuance of the written notice to the licensee under paragraph (f)(2) of this section, that the licensee objects to the initial decision. Any objection filed by a licensee must state, in writing:

(i) Why the initial decision is legally inconsistent with the Act or this Part; and

(ii) Information concerning any underlying factual issue deemed by the licensee to be necessary to the Administrator's decision upon the objection.

(2) The Administrator will promptly take action on any licensee's objection which meets the requirements of paragraph (g)(1). If the Administrator determines that there exist one or more specific and material issues of fact pertaining to the initial decision on the proposed modification or revision, which must be resolved by a formal evidentiary hearing, the Administrator will provide for a formal hearing which will proceed in accordance with Subpart E of this part, except that for the purposes of a formal hearing under this section, references in Subpart E to:

(i) The "applicant" will be deemed to mean the "licensee";

(ii) The "application" will be deemed to mean "the modification or revision of the license"; and

(iii) "Issuance, transfer or renewal of a license" will be deemed to mean "modification or revision of a license."

(h) *Final action by the Administrator.*

(1) After the close of the 30-day period described in paragraph (g)(1) of this section, or after taking action on a licensee's objection under paragraph (g)(2), the Administrator will take final action on the license modification or revision.

(2) The Administrator will implement a license modification or revision by issuing an appropriate document amending the license.

§ 981.530 Renewal of a license.

Each licensee shall have a preferential right to renew a license subject to the requirements of this part, upon such terms and conditions and for such period of years, not to exceed an additional 10 years for each renewal, as the Administrator determines to be reasonable and appropriate.

§ 981.540 Transfer of license.

Upon application, a license issued under this part may be transferred if the Administrator determines that such transfer is in the public interest and that the prospective transferee meets the requirements, and the prerequisites to issuance, of this part. When a licensee intends to apply for transfer of the license, the licensee and the prospective transferee shall consult with the Administrator regarding applicability of the requirements of this part to the proposed transfer.

§ 981.550 Suspension, revocation, termination, relinquishment or surrender of a license.

(a) *Suspension or revocation.* Whenever a licensee fails to comply with any applicable provision of the Act or any applicable rule, restriction, or license term or condition issued or imposed by the Administrator under this Part, the Administrator may request that the Attorney General file an action in an appropriate United States district court:

(1) To suspend the license; or

(2) To revoke such license, if such failure is knowing and continues for a period of 30 days after the Administrator sends notification of such failure by registered letter to the licensee at his record post office address.

(b) *Automatic operation of license terms.* The Administrator may provide in the terms of a license for automatic suspension or termination of the license upon the occurrence of a fixed or agreed-upon condition, event, or time. In such cases, judicial proceedings under paragraph (a) of this section are not required to effect a suspension or termination.

(c) *Emergency orders.* The Administrator may order the licensee to cease or alter construction or operation activities pending the completion of a judicial proceeding pursuant to paragraph (a) of this section if the Administrator determines that immediate suspension of such activities is necessary to protect public health and safety or to eliminate any imminent and substantial danger to the environment as recognized in any treaty or convention to which the United States is a party.

(d) *Relinquishment or surrender.*

(1) Any licensee may at any time, without penalty, surrender to the Administrator a license issued to him, or relinquish to the Administrator, in whole or in part, any right to conduct construction or operation of an OTEC facility or plantship, including part or all of any right of way which may have been granted in conjunction with such license. However, such surrender or relinquishment shall not relieve the licensee of any obligation or liability established by applicable law, or of any obligation or liability for actions taken by him prior to such surrender or reliquishment, or during disposal or removal of any components required to be disposed of or removed pursuant to this Part.

(2) If part of all of a right of way which is relinquished, or for which the license is surrendered, to the Administrator under paragraph (d)(1) of this section contains an electric transmission cable or pipeline which is used in conjunction with another license for an OTEC facility, the Administrator shall allow the other licensee an opportunity to add such right of way to his license before informing the Secretary of the Interior that the right of way has been vacated.

Subpart E—Formal Hearing Procedures

§ 981.560 Formal hearing procedures.

(a)(1) *General.* All formal hearings described in §§ 981.350 and 981.525 of this part are governed by 5 U.S.C. 554 through 557 and the procedures contained in this section.

(2) Hearings held under this section will be consolidated insofar as practicable with hearings held by other agencies.

(b) *Decision to hold a hearing.*

(1) Whenever, after holding an informal hearing under § 981.340 of this part, the Administrator determines that there are one or more specific and material issues of fact pertaining to the application which must be resolved by a formal hearing, he will provide for a formal hearing.

(2) Whenever, under § 981.525 of this part, the Administrator determines that there are one or more specific and

material issues of fact pertaining to the proposed modification or revision to the terms or conditions of the license which must be resolved by a formal hearing, he will provide for a formal hearing.

(3) The record developed in any formal hearing under this paragraph will be part of the basis for the Administrator's decision to approve or deny issuance, modification, or revision of a license, as applicable.

(c) *Assignment of Administrative Law Judge.* Upon deciding to hold a formal hearing, the Administrator will refer the proceeding to the NOAA Office of Administrative Law Judges for assignment to an Administrative Law Judge (judge) to serve as presiding officer for the hearing.

(d) *Notice.*

(1) The Administrator will publish public notice of the formal hearing in the **Federal Register** at least 15 days before the beginning of the hearing, and will send written notice by registered or certified mail or by personal delivery to:

(i) Each applicant;

(ii) The Governor of each adjacent coastal State;

(iii) Each person who submitted written comments upon the application, or testified at any prior informal hearing on the application; and

(iv) Each person who requests a copy of the notice.

(2) Notice of a formal hearing will include, among other things:

(i) Time and place of the hearing;

(ii) The issues in dispute which are to be resolved in the formal hearing;

(iii) The due date for filing a written request to participate in the hearing in accordance with paragraphs (f)(2) and (f)(3) of this section; and

(iv) Reference to any prior informal hearing from which the issues to be determined arose.

(e) *Powers and duties of the administrative law judge.* Judges have all the powers and duties necessary to preside over the parties and proceedings and to conduct fair and impartial hearings, as specified by 5 U.S.C. 554–557 and this section, including the power to:

(1) Regulate the course of the hearing and the conduct of the parties, interested persons and others submitting evidence, including but not limited to the power to require the submission of part or all of the evidence in written form if the judge determines a party will not be prejudiced thereby and if otherwise in accordance with law;

(2) Rule upon requests submitted in accordance with paragraph (f)(2) of this section to participate as a party, or requests submitted in accordance with paragraph (f)(3) of this section to participate as an interested person in a proceeding, by allowing, denying, or limiting such participation;

(3) Hold conferences in accordance with paragraph (i) of this section for the simplification or, if appropriate, settlement of the issues by consent of the parties or to otherwise expedite the proceedings;

(4) Administer oaths and affirmations;

(5) Rule upon requests for, and issue subpoenas for the attendance and testimony of witnesses and the production of books, records, and other evidence upon proper application under paragraph (p) of this section;

(6) Rule on discovery requests, establish discovery schedules, and take or cause to be taken depositions or interrogatories;

(7) Rule on requests for protective orders to protect persons in the discovery process from undue burden or expense, or for other good cause;

(8) Require, at or prior to any hearing, the submission and exchange of evidence;

(9) Rule upon offers of proof and evidence and receive, exclude, and limit evidence as set forth in paragraph (j)(3) of this section;

(10) Introduce documentary or other evidence into the record;

(11) Examine and cross-examine witnesses;

(12) Consider and rule upon motions, procedural requests, and similar matters;

(13) Take such measures as may be necessary (such as sealing portions of the hearing record) to protect information consisting of trade secrets or commercial or financial information which is privileged or confidential;

(14) Schedule the time and place of the hearing (in accordance with the Act), or the hearing conference, continue the hearing from day to day, adjourn the hearing to a later date, or a different place, and reopen the hearing at any time before issuance of the recommended or initial decision, having due regard for the convenience and necessity of the parties;

(15) Establish rules, consistent with applicable law, for media coverage of the proceedings and for the closure of the hearing in the interest of justice;

(16) Strike testimony of a witness refusing to answer a question ruled to be proper;

(17) Make and file decisions in conformity with this subpart; and

(18) Take any action authorized by the rules in this section or in conformance with 5 U.S.C. 554 through 557.

(f) *Hearings: Participation.*

(1) Parties to the formal hearing will include:

(i) The NOAA General Counsel;

(ii) The applicant; and

(iii) Any other person determined by the judge, in accordance with paragraph (f)(2) below, to be eligible to participate as a full party.

(2)(i) Any person desiring to participate as a party in a formal hearing must submit a request to the judge to be admitted as a party. Such person will be allowed to participate as a party if the judge finds that the interests of justice and a fair determination of the issues would be served by granting the request. The judge will give special consideration to each request from a designated adjacent coastal State to participate as a party.

(ii) Any request to participate as a party must be submitted to the judge within 10 days after the date of mailing or publication of notice of a decision to hold a formal hearing under paragraph (d) of this section, whichever occurs later. The judge may entertain a request submitted after the expiration of the 10 days, but such a late request may be granted only upon an express finding on the record that:

(A) Special circumstances justify granting the request;

(B) The interests of justice and a fair determination of the issues would be served by granting the request;

(C) The requestor has consented to be bound by all prior written agreements and stipulations agreed to by the existing parties, and all prior orders entered in the proceedings; and

(D) Granting the request will not cause undue delay or prejudice the rights of the existing parties.

(3)(i) Any interested person who desires to submit evidence in a formal hearing must submit a request to the judge within 10 days after the date of mailing or publication of notice of a decision to hold a formal hearing, whichever occurs later. The judge may waive the 10 day rule for good cause, such as if the interested person, making this request after the expiration of the 10 days, shows that he lacked actual knowledge of the formal hearing during the 10 days, and the evidence he proposes to submit may significantly affect the outcome of the proceedings.

(ii) The judge may permit any interested person to submit evidence at any formal hearing if the judge determines that such evidence is relevant to facts in dispute concerning an issue being adjudicated. The fact that an interested person may submit evidence under this paragraph at a hearing does not entitle the interested person to participate in other ways in

the hearing unless allowed by the judge under paragraph (f)(3)(iii) of this section.

(iii) The judge may allow any interested person to submit oral testimony, oral arugments, briefs, or to cross-examine witnesses or participate in other ways if the judge determines that the interests of justice and a fair determination of the issues would be better served by allowing such participation by the interested person.

(g) *Certification of issues.* Whenever a formal hearing is conducted pursuant to this section, the Administrator will certify the issues for decision to the judge and the formal hearing will be limited to those issues.

(h) *Obligation to submit evidence and raise issues before a formal hearing is held.* No party or interested person may submit evidence which was not submitted previously for the administrative record as part of the comment on the application for issuance, transfer or renewal of a license, unless the judge finds that good cause exists for the failure to submit it. Good cause includes the case where the person seeking to raise the new issues or introduce new information shows that the person could not reasonably have ascertained the issues or made the information available at a prior stage in the administrative process; or that the person could not have reasonably anticipated the relevance or materiality of the information sought to be introduced.

(i) *Conferences.*

(1) At any time the judge considers appropriate, he may, upon his own motion or the motion of any party or interested person, direct the parties and interested persons, or their attorneys to meet (in person, by telephone conference call, or otherwise) in a conference to consider:

(i) Simplification of the issues;

(ii) Settlements in appropriate cases;

(iii) Stipulations and admissions of fact, and contents and authenticity of documents;

(iv) Exchange of evidence, witness lists, and summaries of expected testimony;

(v) Limitation of the number of witnesses; and

(vi) Such other matters as may tend to expedite the disposition of the proceedings.

(2) The record will show how the matters were disposed of by order and by agreement in such conferences.

(j) *Hearings: Appearance and presentation of evidence.*

(1) *Representative.* A party or interested person may appear at a hearing under this Part in person, by attorney, or by other representative.

(2) *Failure to appear.*

(i) Absent a showing of good cause, failure of a party to appear at a hearing:

(A) Constitutes waiver of the right to a hearing under this section;

(B) Constitutes consent of the party to the making of a decision on the record of the hearing; but

(C) Will not be deemed to be a waiver of the right to be served with a copy of the judge's decision.

(ii) If a party fails to appear for a hearing, the judge will cause to be placed in the record all of the facts concerning the issuance and service of the notice of the time and place of the hearing.

(3) *Evidence.*

(i) The order of presentation of evidence will be at the judge's discretion.

(ii) The testimony of witnesses will be upon oath or affirmation administered by the judge and will be subject to such cross-examination as may be required for a full and true disclosure of the facts. The formal rules of evidence do not apply, but the judge will exclude evidence which is immaterial, irrelevant, non-probative, or unduly repetitious. Hearsay evidence is not inadmissable as such.

(iii) If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, the party must state briefly the grounds for such objections. Rulings on each objection will appear in the record.

(iv) Formal exception to an adverse ruling is not required.

(v) At any time during the proceedings, the judge may require a party or a witness to state his position on any issue, and the theory in support of such position.

(vi) Upon the failure of a party or interested person to effect the appearance of a witness or the production of a document or other evidence ruled relevant and necessary to the proceeding, the judge may take appropriate action, as authorized by law.

(vii) The parties may, by stipulation, agree upon any facts involved in the proceedings and include them in the record with the consent of the judge. Written stipulations shall be signed in accordance with paragraph (r)(2) of this section, and shall be served upon all parties of record within the time period specified by the judge.

(4) *Authority of judge to expedite adjudication.* To prevent unnecessary delays or an unnecessarily large record, the judge may:

(i) Limit the number of witnesses whose testimony may be cumulative;

(ii) Strike argumentative, repetitious, cumulative, immaterial, non-probative, or irrelevant evidence;

(iii) Take necessary and proper measurses to prevent argumentative, repetitious, or cumulative cross-examination; and

(iv) Impose such time limitations on arguments as the judge determines appropriate, having regard for the volume of the evidence and the importance and complexity of the issues involved.

(5) *Argument.* At the close of any formal hearing any party shall be given the opportunity to submit written arguments on issues before the judge.

(6) *Official notice.* Official notice may be taken of any matter not appearing in evidence in the record, which is among the traditional matters of judicial notice, or concerning which the Department of Commerce, by reason of its functions, is deemed to be expert, or of a non-privileged document required by law to be filed with, prepared or published by a government body, or of any reasonably available public document. The parties will be given adequate notice, at the hearing or otherwise before the judge's decision, of the matters so noticed, and upon timely request by a party will be given reasonable opportunity to show the contrary.

(7) *Record.* (i) The judge or the Administrator will arrange for a verbatim tape or other record of any oral hearing proceedings. An official transcript of the proceedings will be prepared and copies may be obtained upon written request filed with the reporter and upon payment of the fees at the rate provided in the agreement with the reporter.

(ii) The official transcript, exhibits, briefs, reply briefs, proposed findings of fact, requests and other documents and papers filed will constitute the exclusive record for decision on the issues concerning which the hearing was held.

(iii) The record developed in any hearing held pursuant to § 981.350 of this part will be part of the basis for the Administrator's decision to approve or deny the license.

(k) *Interlocutory appeals.*

(1) At the request of a party or on the judge's own motion, the judge may certify to the Administrator for review a ruling which does not finally dispose of the proceeding if the judge determines that such a ruling involves a controlling question of law and that an immediate appeal therefrom may materially advance the ultimate disposition of the matter.

(2) Upon certification by the judge of an interlocutory ruling for review, the Administrator will expeditiously decide the matter, taking into account any briefs in this respect filed by the parties within 10 days after certification. The Administrator's order on an interlocutory appeal will not be considered the final decision of the Administrator except by operation of other provisions in this section.

(3) No interlocutory appeal will lie as to any ruling not certified to the Administrator by the judge. Objections to rulings not certified to the Administrator by the judge will be a part of the record and will be subject to review at the same time and in the same manner as the Administrator's review of the recommended or initial decision of the judge.

(l) *Decision.*

(1) *Proposed findings of fact.* The judge will allow each party to file with the judge proposed findings of fact together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs must be filed on or before the date specified by the judge. Such proposals and briefs must refer to all portions of the record and to all authorities relied upon in support of each proposal. Reply briefs must be submitted within 10 days after receipt of the proposed findings to which they respond, unless the judge allows additional time.

(2) *Recommended decision.* As soon as practicable, but normally not later than 30 days after the close of the record in the proceedings, the judge will evaluate the record of the formal hearing and prepare and file a recommended decision with the Administrator. The formal hearing must be concluded within 240 days after the publication of the notice of application pursuant to § 981.290(a) of this part.

(3) *Final decision.*

(i) As soon as practicable, but normally not later than 30 days after receipt of the recommended decision, the Administrator will issue a final decision. The final decision may accept or reject all or part of the recommended decision.

(ii) The Administrator will base the final decision upon the record already made, except that the Administrator may issue orders:

(A) Specifying the filing of supplemental briefs; or

(B) Remanding the matter to a judge for the receipt of further evidence, or for other assistance in the determination of the matter.

(iii) With respect to hearings to resolve material issues of fact pursuant to § 981.350 of this part, the Administrator may defer announcement of his final decision on the findings of fact until the time he takes final action on the issuance, transfer or renewal of a license.

(m) *Motions and requests.* Motions and requests must be filed in writing with the judge or must be stated orally and made part of the hearing record. Each motion or request must state the particular order, ruling, or action desired, and the legal and factual grounds therefor.

(n) *Witnesses and fees.* Witnesses subpoenaed will be paid the same fees and mileage, and in the same manner, as are paid for like services in the District Court of the United States for the district in which the hearing is located.

(o) *Depositions.*

(1) Any party desiring to take the deposition of a witness shall make application in writing to the judge, setting forth the reasons why such deposition should be taken; the time when, the place where, and the name and mailing address of the person before whom the deposition is requested to be taken; the name and address of each witness to appear for deposition; and the subject matter concerning which each witness is expected to testify.

(2) Depositions may be taken orally or upon written interrogatories before any person designated by the judge.

(3) Such notice as the judge shall order will be given for the taking of a deposition, but this ordinarily will not be less than 5 days' written notice when the deposition is to be taken within the United States and ordinarily will not be less than 20 days' written notice when the deposition is to be taken elsewhere.

(4) Each witness testifying upon deposition will be sworn and any party will have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, will be reduced to writing, read to the witness, signed by the witness unless waived, and certified by the person presiding. Thereafter, the person presiding will deliver or mail a copy of the document to each party. Subject to such objection to the questions and answers as were noted at the time of taking the deposition which would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by any party taking it as against any party who was present or represented at the taking of the deposition or who had due notice thereof.

(p) *Subpoenas.* A party may request the judge to issue or the judge on the judge's own motion may issue a subpoena for the attendance and testimony of witnesses and for the production of documentary or other evidence. Applications for subpoenas must be in writing, and must specify the general relevance and reasonable scope of the evidence sought to be produced.

(q) *Extension of time.* The time for the filing of any document under this section may be extended by the judge if:

(1) The request for the extension of time is made before or on the final date allowed for the filing; and

(2) The judge, after giving written or oral notice to and considering the views of all other parties (when practicable), determines that there is good reason for the extension.

(r) *Filing, submission and service of documents.*

(1) Whenever the regulations in this subpart or an order issued hereunder require a document to be filed within a certain period of time, such document will be considered filed as of the date of the postmark, if mailed, or (if not mailed) as of the date actually delivered to the office where filing is required. Time periods will begin to run on the day following the date of the document or event which begins the time period.

(2) All submissions must be signed by the person making the submission, or by the person's attorney or other authorized agent or representative.

(3) Service of a document must be made by delivering or mailing a copy of the document to the known address of the person being served.

(4) Whenever the regulations in this Subpart require service of a document, such service may effectively be made on the agent for the service of process or on the attorney for the person to be served.

(5) Refusal of service of a document by the person to be served, his agent, or attorney, will be deemed effective service of the document as of the date of such refusal.

(6) A certificate of the person serving the document by personal delivery or by mailing, setting forth the manner of the service, will be proof of the service.

§ 981.570 Ex parte communications.

(a) "*Ex parte* communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include requests for status reports.

(b) Except to the extent required for disposition of *ex parte* matters as authorized by law, upon assignment of a matter to an administrative law judge and until the final decision of the Administrator is effective under these regulations, no *ex parte* communication relevant to the merits of the proceeding

shall be made, or knowingly caused to be made:

(1) By the judge or by an agency employee involved in the decisional process of the proceeding to any interested person outside NOAA; or

(2) By an interested person outside NOAA to the judge or to any agency employee involved in the decisional process of the proceeding.

(c) The judge may not consult any person or party on a fact in issue unless on notice and opportunity for all parties to participate.

(d) An agency employee or judge who makes or receives a prohibited communication must place in the hearing record the communication and any response thereto, and the judge, or Administrator, as appropriate, may take action in this respect consistent with these regulations, the Act, and 5 U.S.C. 556(d) and 557(d).

(e) This section does not apply to communications to or from the attorney representing the Administrator in the proceedings (agency representative). However, the agency representative may not participate or advise in the initial or recommended decision of the judge or the Administrator's review thereof except as witness or counsel in the proceeding in accordance with these regulations.

(f)(1) Paragraphs (b) through (d) of this section do not apply to communications concerning national defense or foreign policy matters. Such Ex Parte communications:

(i) On national defense or foreign policy matters to or from an agency employee; or

(ii) From employees of the United States Government involving inter-governmental negotiations;

are permitted if the communicator's position with respect to those matters cannot otherwise be fairly presented for reasons of foreign policy or national defense.

(2) Ex Parte communications subject to paragraph (f) of this section shall be made a part of the public record to the extent that they do not include information classified pursuant to Executive Order. Classified information shall be included in a classified portion of the record which shall be available for review only in accordance with applicable law.

Subpart F—Enforcement Procedures

§ 981.580 General.

(a) *Purpose and scope.*

(1) Section 302 of the Act authorizes the Administrator to assess a civil penalty, in an amount not to exceed twenty-five thousand dollars ($25,000) for each violation, against any person found to have committed an act prohibited by section 301 of the Act. Each day of a continuing violation is a separate offense.

(2) Section 111 of the Act describes the circumstances under which the Administrator may suspend or terminate a license, or seek revocation of a license, for violation of the Act or of any regulation, restriction or condition issued under the Act.

(3) Section 302 of the Act authorizes the Administrator to issue orders directing any person subject to section 301 of the Act to comply with the Act, or any rule, regulation, order, license, term, or condition issued under the Act. Section 302 also authorizes the Administrator to bring a civil action for appropriate relief, including temporary or permanent injunctive relief, to halt or redress any such violation.

(4) Section 110 of the Act authorizes the Administrator to place observers on ocean thermal energy conversion facilities and plantships licensed under the Act to monitor compliance and environmental effects of activities under the license.

(5) Section 114 of the Act describes the circumstances under which a person may bring a civil action against an alleged violator or against the Administrator for failure to perform a nondiscretionary duty, and directs the Administrator to issue regulations governing procedures prerequisite to such a civil action.

(6) The regulations in this Subpart provide uniform rules and procedures for the assessment of civil penalties (§§ 981.590 and 981.600 of this part); establishment of license sanctions (§ 981.610 of this part); issuance of compliance orders (§ 981.620 of this part); placement of observers on or in OTEC facilities and plantships (§ 981.630 of this part); and the giving of advance notice of private civil actions (§ 981.640 of this part).

(b) *Filing and service of documents.*

(1) Filing and service of documents required by this Subpart shall be in accordance with §§ 981.560(r) and 981.158 of this part. The method for computing time periods set forth in §§ 981.560(r) and 981.158 of this part also applies to any action or event, such as payment of a civil penalty, required by this Subpart to take place within a specified period of time.

(2) If an oral or written request is made to the Administrator within 10 days after the expiration of a time period established in this Subpart for the required filing of documents, the Administrator may permit a late filing if the Administrator finds reasonable grounds for an inability or failure to file within the time period. All extensions will be in writing. Except as provided by this paragraph, by § 981.590(b) of this part or by order of an administrative law judge, no requests for an extension of time may be granted.

§ 981.590 Assessment procedure.

(a) *Notice of violation and assessment (NOVA).*

(1) A Notice of violation and assessment (NOVA) will be issued by the Administrator and served personally or by registered or certified mail, return receipt requested, upon the person alleged to be subject to a civil penalty (the respondent). A copy of the NOVA will similarly be served upon an affected licensee, or the owner of an affected vessel (defined in paragraph (f) of this section), if the licensee or owner is not the respondent. Although no specific form is prescribed, the NOVA will contain:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation, license, or order allegedly violated;

(iii) The findings and conclusions upon which the Administrator based the proposed assessment; and

(iv) The amount of penalty proposed to be assessed.

(2) With respect to the amount of civil penalty, the Administrator will take into account information available to the agency concerning the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the respondent, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(3) The NOVA may also contain an initial proposal for compromise or settlement of the case. The Administrator may also attach documents which illuminate the facts believed to show a violation. The NOVA will advise of the respondent's rights at that point in the proceeding, and will be accompanied by a copy of regulations governing civil enforcement procedures, this Subpart, and the applicable provisions of Subpart E of this part.

(b) *Procedures upon receipt of a NOVA.*

(1) The respondent shall have 30 days from receipt of the NOVA in which to respond. During this time the respondent may:

(i) Accept the proposed penalty or compromise penalty, if any, by taking the actions specified in the NOVA;

(ii) Seek to have the NOVA amended or modified as prescribed in paragraph (b)(2) of this section;

(iii) Request a hearing, as prescribed in paragraph (b)(5) of this section;

(iv) Take no action, in which case the NOVA becomes final in accordance with paragraph (c) of this section; or

(v) Request an extension of the time allowed to respond to the NOVA under paragraph (b)(3) of this section.

Options (ii), (iii), (iv) and (v) above may also be exercised by the affected licensee or the owner of an affected vessel.

(2) The respondent, the affected licensee, or the owner of an affected vessel, may seek amendment or modification of the NOVA to conform to the facts or law as that person sees them by notifying the Administrator at the telephone number or address specified in the NOVA. Where amendment or modification is sought, the Administrator will either amend the NOVA or decline to amend it, and will so notify the respondent, affected licensee or owner, as appropriate.

(3) The respondent, affected licensee or owner of an affected vessel may, within the 30-day period specified in paragraph (b)(1) of this section, request an extension of time to respond. The Administrator may grant an extension of up to 30 days, unless the Administrator determines that the requestor could, exercising reasonable diligence, prepare a response within the 30-day period specified in paragraph (b)(1) of this section. If the Administrator does not respond to the request within 48 hours of its receipt by the Administrator, the request will be granted automatically for the extension requested, up to a maximum of 30 days. A telephone response to the request within the 48-hour period will be considered effective response, and will be followed by written confirmation.

(4) The Administrator may, for good cause, grant an additional extension beyond the 30-day period specified in paragraph (b)(3) of this section.

(5) If the respondent, the affected licensee, or the owner of an affected vessel wishes a hearing, a written and dated request shall be served, either in person or by certified or registered mail, return receipt requested, at the address specified in the NOVA. The request shall either attach a copy of the relevant NOVA or refer to the relevant NOAA case number.

(6) Any denial, in whole or in part, of any request under this section which is based upon untimeliness will be made in writing.

(7) The Administrator may, in the Administrator's discretion, treat any communication from a respondent, an affected licensee, or owner of an affected vessel as a request for a hearing under paragraph (b)(5) of this section.

(c) *Final decision.*

(1) If no request for hearing is filed under paragraph (b)(5) of this section, the NOVA becomes effective and constitutes the final decision and order of the Administrator on the 30th day after service of the NOVA, or on the last day of any delay period granted under § 981.580(b)(2) of this Subpart or paragraph (b)(3) or (b)(4) of this section.

(2) If a request for hearing is filed in accordance with paragraph (b)(5) of this section, the date of the final decision will be as provided in § 981.600 of this Subpart.

(d) *Payment of final assessment.*

(1) Respondent shall make full payment of the civil penalty assessed within 30 days after the date upon which the assessment becomes effective as the final decision and order of the Administrator under paragraph (c) of this section or § 981.600(k) of this part or, if judicial review of the assessment is initiated under section 302(b) of the Act during the 30-day period, within 10 days after the appropriate court has entered final judgment in favor of the Administrator, unless the court's order provides otherwise. Payment shall be made by mailing or delivering to the Administrator at the address specified in the NOVA a check or money order made payable in United States currency in the amount of the assessment to the "Treasurer of the United States."

(2) Upon any failure to pay the civil penalty assessed, the Administrator may request the Attorney General of the United States to recover the amount assessed in any appropriate district court of the United States, or may take action under paragraph (e) of this section. In any court action under this paragraph (d)(2), the validity and appropriateness of the final order imposing the civil penalty is not subject to review.

(e) *Compromise of civil penalty.*

(1) In the Administrator's sole discretion, the Administrator may compromise, modify, remit, or mitigate, with or without conditions, any civil penalty which has been imposed under this Subpart, or which is subject to imposition.

(2) The compromise authority of the Administrator under this paragraph (e) is in addition to any similar authority provided in the Act or in these regulations, and may be exercised either upon the initiative of the Administrator or in response to a request by the alleged violator or other interested person.

(3) If the Administrator acts under this paragraph (e) prior to issuing a NOVA or after a final assessment becomes payable under paragraph (d) of this section, the Administrator will prepare a document indicating the reasons for the action taken and citing this paragraph and section 302(c) of the Act as authority. Once the case has been assigned for hearing under § 981.600(a) of this part, the Administrator will, except in unusual circumstances, defer any compromise action under this paragraph (e) until the administrative law judge has rendered an initial decision in the matter. Neither the existence of the compromise authority of the Administrator under this paragraph (e) nor the Administrator's exercise thereof at any time changes the date upon which an assessment becomes final or payable.

(f) *Application of this section to licensees and vessel owners.*

(1) This section applies to affected licensees. "Affected licensee" means the holder of a license issued under this Part which license may be subject to sanction as a result of civil penality proceedings under this Subpart.

(2) This section also applies to owners of affected vessels. "Affected vessel" means any vessel of the United States that, under section 302(e) of the Act, may be liable *in rem* for any civil penalty assessed as a result of civil penalty proceedings under this Subpart.

§ 981.600 Hearing and appeal procedures.

(a) *Beginning of hearing procedures.* Following receipt of a written request for hearing timely filed under § 981.590(b) of this part, the Administrator will begin procedures under this section by forwarding the request, a copy of the NOVA, and any response thereto to the NOAA Office of Administrative Law Judges, which will docket the matter for hearing. Written notice of the referral will be given promptly to the respondent, the affected licensee, and the owner of an affected vessel (if the affected licensee or owner is not the respondent), with the name and address of the attorney representing the Administrator in the proceedings (the agency representative). Thereafter, all pleadings and other documents shall be filed directly with the NOAA Office of Administrative Law Judges, and a copy shall be served on each party.

(b) *Ex parte communications.* Upon assignment of the case to an administrative law judge, and until an assessment or other action on the matter

becomes effective under these regulations as the final decision of the Administrator, *ex parte* communications are governed by § 981.570 of Subpart E of this part. However, § 981.570 of this part will not be interpreted to diminish the Administrator's compromise authority under § 981.590(e) of this Subpart.

(c) *Duties and powers of judge.*

(1) To the extent consistent with this Subpart, the administrative law judge has all powers and responsibilities enumerated in § 981.560(e) of Subpart E of this part, except that paragraph (e)(2) thereof does not apply. Instead, the judge has the power to rule on a request to participate as a party in the proceedings by allowing, denying, or limiting such participation, except that the respondent, the affected licensee, the owner of an affected vessel and the agency representative will be parties. The judge will, prior to ruling on a request to be admitted as a party, ascertain the views of the other parties and base the ruling on whether the request is from a person who could be directly and adversely affected by the final decision and who may contribute materially to the disposition of the proceedings.

(d) *Participation by parties.*

(1) The respondent, the affected licensee, the owner of an affected vessel, the agency representative, and, to the extent permitted by the judge any other party, may appear in person, by counsel or by other representative, and may examine and cross-examine witnesses to the extent required for a full and true disclosure of the facts, present documentary or other evidence in support of that party's case or defense, and conduct oral argument at the close of testimony. This paragraph shall not be interpreted to diminish the powers and duties of the judge provided in paragraph (c) of this section.

(2) Failure of any party to appear at the hearing will be deemed a waiver of the right to a hearing and consent to the making of a decision on the record of the hearing.

(e) *Appearance and presentation of evidence.* Appearance and the presentation of evidence are governed by § 981.560(j) of Subpart E of this part.

(f) *Settlements.* An agreement by respondent and the agency representative to settle the matter, if filed before an assessment or other action in the case becomes effective under these regulations as the final decision of the Administrator, will terminate the proceedings and vacate any initial or administrative appellate decision issued. However, if settlement is reached before the judge submits the initial decision and certifies the record under paragraph (i) of this section, the judge may require submission of a copy of the agreement solely to assure that the judge's consideration of the case is completed and to order the matter dismissed on the basis of the agreement.

(g) *Interlocutory appeals.* Appeals of interlocutory rulings by the judge under this subpart are governed by § 981.560(k) of Subpart E, except that objections to rulings not certified to the Administrator by the judge are subject to review at the same time and in the same manner as the Administrator's review of the initial decision of the judge upon any appeal therefrom under paragraph (j) of this section.

(h) *Proposed findings and conclusions.* Unless a different schedule is established in the discretion of the judge, the parties must file any proposed findings of fact and conclusions of law, together with supporting briefs, within 30 days after the judge closes the hearing. Any reply briefs must be submitted within 15 days after receipt of the proposed findings and conclusions to which they respond, unless the judge sets a different schedule.

(i) *Initial decision.*

(1) After expiration of the period provided in paragraph (h) of this section for filing reply briefs, the judge will render a written initial decision upon the record in the case, setting forth:

(i) Findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record. In determining the amount of a penalty assessment, the judge is not bound by the amount proposed or assessed in the NOVA, or elsewhere, but will decide the matter *de novo*, stating the reasons in view of the factors set forth in section 302(c)(2) of the Act and § 981.590(a)(2) of this Subpart;

(ii) Reasons for the rejection of findings and conclusions proposed by the parties;

(iii) A statement of facts officially noticed and relied upon in the decision, if the parties have not previously been advised of such notice; and

(iv) Such other matters as the judge considers appropriate, including recommendations, if any, regarding license sanctions and forfeiture actions.

(2) The judge will submit the initial decision to the Administrator, serve copies on the parties, and transmit to the Administrator the record of the proceeding together with a certification to the effect that, to the best of the judge's knowledge and belief, the record is a complete and accurate compilation of all evidence and other documents in the proceeding, except in such particulars as are specified.

(j) *Appeals.*

(1) Any party may appeal the initial decision of the judge by filing a notice of appeal with the Administrator within 45 days after the date of the initial decision. The notice of appeal shall concisely state such exceptions as the appellant takes to the initial decision and shall contain citations to the record or other authority relied upon. The appellant shall serve a copy of the notice of appeal on each other party.

(2)(i) The Administrator will decide the appeal upon the record already made, except that the Administrator may issue orders:

(A) Specifying the filing of supplemental briefs; or

(B) Remanding the matter to an administrative law judge for receipt of further evidence or other assistance in the determination of the matter.

(ii) The decision of the Administrator will be in writing and will state the reasons for accepting or rejecting the exceptions taken by the appellant. To the extent the Administrator's decision is silent as to a material issue of fact, law, or discretion presented on the record, the decision will be deemed to adopt the findings and conclusions thereon, and the reasons or basis therefor, contained in the initial decision.

(k) *Final decision.*

(1) Unless a notice of appeal is timely filed in accordance with paragraph (j) of this section, the initial decision of the judge becomes effective and constitutes the final decision and order of the Administrator on the 45th calendar day after the date it is rendered.

(2) If a notice of appeal is timely filed as provided in paragraph (j) of this section, the Administrator's decision becomes effective and constitutes the final decision and order of the Administrator on the date the decision is issued, or as otherwise specified by the Administrator in the decision.

(3) Payment of any assessment which becomes final under this paragraph (k) shall be made in accordance with § 981.590(d) of this part.

(l) *Application of this section to licensees and vessel owners.* The provisions of this section apply to affected licensees and owners of affected vessels, as defined in § 981.590(f).

§ 981.610 License sanctions.

(a) *Application of section.* This section governs the suspension, revocation, termination or modification of any license issued under this Part for

failure to comply with any provision of the Act, or any regulation, order, license condition or restriction issued under the Act.

(b) *Basis for sanctions.*

(1) The Administrator may act under this section with respect to a license issued under the Act, if:

(i) The terms of the license call for suspension or termination of the license upon the occurrence of a fixed or agreed upon condition, event or time and the Administrator determines that such condition, event, or time has occurred; or

(ii) The Administrator determines in accordance with paragraph (d)(1)(ii) of this section that immediate suspension of the license, or immediate suspension or modification of any activity under the license, is necessary; or

(iii) An appropriate court issues an order of suspension or revocation with respect to the license.

(2) The Administrator may suspend a license in accordance with paragraph (b)(1) and the other provisions of this section, on the basis that the licensee has failed to pay any penalty assessed, or fine imposed, under section 302 of the Act. The license may be reinstated by affirmative order of the Administrator upon receipt, as prescribed in paragraph (d) of this section, of full payment of the penalty assessed, together with interest thereon at the annual rate provided by current regulations of the Department of the Treasury as to late payments of amounts due the Government, computed from the date payment first became overdue, or upon full payment, in accordance with any applicable court order, of the fine imposed.

(c) *Nature of sanctions.* In the Administrator's discretion and subject to the requirements of this section, the Administrator may take any of the following actions or combinations thereof with respect to a license issued under the Act:

(1) Revoke the license;

(2) Suspend the license or any activity under the license, either for a specified period of time or until certain stated requirements are met, or both;

(3) Modify the license, for example by imposing additional conditions and restrictions in order to aid future enforcement efforts; or

(4) Terminate the license in accordance with the provisions of this Subpart.

(d) *Notice of license sanction.*

(1) If the Administrator determines, on the basis of available information, that the licensee is not in compliance with any applicable provision of the Act, or any regulation, order or any license condition or restriction issued under the Act, the Administrator may issue the licensee a notice of license sanction (NOLS) stating that the Administrator has requested the Attorney General to file an action in an appropriate United States district court, seeking a sanction against the license involved. The NOLS will state the sanction proposed by the Administrator to be imposed as provided in paragraph (c) of this section, and the basis therefor and will advise that issuance of the NOLS does not preclude the Administrator from taking, at any time, any other enforcement action under section 302 or any other applicable provision of the Act.

(i) If the Administrator expects to seek revocation of the license, the NOLS will advise that:

(A) If the violation set forth in the NOLS continues for a period of 30 days from the date of issuing the NOLS, the Administrator may request the Attorney General to seek revocation of the license in an appropriate United States district court;

(B) The licensee may, within 30 days after the date of issuing the NOLS, submit to the Administrator evidence of compliance; and

(C) If the Administrator determines, on the basis of evidence submitted during the 30-day period, that the licensee has complied, the Administrator will not seek revocation of the license.

(ii) The Administrator may immediately suspend the license or suspend or modify any activity under the license pending completion of judicial proceedings under section 111(a) of the Act if the Administrator finds, and issues an emergency order summarizing the finding and the basis therefor, that such action is necessary to:

(A) Protect public health and safety; or

(B) Eliminate imminent and substantial danger to the environment.

(iii) If the Administrator acts under paragraph (d)(1)(ii) of this section, the Administrator will serve the emergency order in the manner described in paragraph (d)(4) of this section, and will seek to expedite judicial proceedings.

(iv) The licensee may request the Administrator to review any emergency order issued under paragraph (d)(1)(ii) of this section. The Administrator will determine whether any review of the emergency order should be granted, and whether any review granted will be in the form of an informal or formal hearing. The Administrator's granting of a review will not change the effective date of the emergency order unless the Administrator specifies such a change in writing when granting the review of the emergency order.

(2) If the Administrator determines, on the basis of available information, that the licensee is not in compliance with the license, and if the license provides for a license sanction on the basis of such failure to comply, the Administrator may issue a NOLS setting forth the sanction to be imposed and the basis therefor. If an opportunity for a hearing is provided by paragraph (e) of this section, the NOLS will advise that the licensee has 30 days from receipt of the notice in which to request or waive a hearing. The notice will further state the effective date of the sanction, which will not be earlier than 30 days after the date of the notice except as provided in paragraph (d)(1)(ii) of this section or in the license. If a hearing opportunity is provided and a hearing is requested in a timely manner, the sanction becomes effective under paragraph (h) of this section.

(3) If a United States district court issues an order calling for a license sanction, the Administrator will issue a NOLS setting forth the sanction to be imposed and the effective date of the sanction. The NOLS will advise that an appeal of the district court's order will not stay the taking effect of the sanction, unless provided otherwise by the court.

(4) The NOLS will be served personally or by registered or certified mail, return receipt requested, on the licensee.

(e) *Opportunity for hearing on an NOLS issued under paragraph (d)(2) of the section.*

(1) The licensee has 30 days from receipt of the NOLS to request a hearing with respect to an NOLS issued under paragraph (d)(2) of this section. However, no hearing is required with respect to matters previously adjudicated in an administrative or judical hearing in which the licensee has been given notice and has had an opportunity to participate.

(2) If the licensee wishes a hearing, a written and dated request shall be served on the Administrator either in person or by certified or registered mail, return receipt requested, at the address specified in the NOLS. The request shall either attach a copy of the relevant NOLS or refer to the relevant NOAA case number.

(3) If no hearing is required by or requested under paragraph (e)(1) of this section, the Administrator may nonetheless order a hearing if the Administrator determines that there are material issues of fact, law or equity to be further explored.

(4) The Administrator may apply to the administrative law judge for an interim order suspending the license, or suspending or modifying any activity under the license, pending completion of proceedings under this section if the Administrator serves prior notice of the application for an interim order on the licensee in the manner described in paragraph (d)(4) of this section. The judge may issue an interim order consistent with the purposes of the Act, unless preliminary evidence presented to the judge indicates a likelihood that the licensee will prevail in the matters at issue.

(5) If the license provides an effective date for the sanction, a request for hearing will not delay the effectiveness of the sanction, except to the extent extended by the Administrator for good cause shown.

(f) *Hearing and initial decision.* If a timely request for a hearing under paragraph (e)(1) of this section is received or the Administrator orders a hearing under paragraph (e)(3) of this section, the Administrator will appoint a hearing officer to hear the matter and render an initial decision.

(g) *Appeals.*

(1) Any party may appeal the initial decision of the hearing officer by filing a notice of appeal with the Administrator within 30 days after the date of the initial decision. The notice of appeal shall concisely state such exceptions as the appellant takes to the initial decision and shall contain citations to the record or other authority relied upon. The appellant shall serve a copy of the notice of appeal on each other party.

(2)(i) The Administrator will decide the appeal upon the record already made, except that the Administrator may issue orders: (A) Specifying the filing of supplemental briefs; or

(B) Remanding the matter to a hearing officer for the receipt of further evidence, or other assistance in the determination of the matter.

(ii) The decision of the Administrator will be in writing and will state the reasons for accepting or rejecting the exceptions taken by the appellant. To the extent the Administrator's decision is silent as to a material issue of fact, law, or discretion at issue in the hearing, the decision will be deemed to adopt the findings and conclusions, and the reasons and basis therefor, contained in the initial decision.

(h) *Final decision.*

(1) Unless a notice of appeal is timely filed in accordance with paragraph (g) of this section, the initial decision of the hearing officer becomes effective and constitutes the final decision and order of the Administrator on the 30th calendar day after the date it is rendered.

(2) If a notice of appeal is timely filed as provided in paragraph (g) of this section, the Administrator's decision becomes effective and constitutes the final decision and order of the Administrator on the date it is issued, or as otherwise specified by the Administrator in the decision. The Administrator will serve notice of the decision on the licensee in the manner described in paragraph (d)(4) of this section.

§ 981.620 Compliance orders.

(a) The Administrator may issue a compliance order, served personally or by registered or certified mail, return receipt requested, to any person subject to section 301 of the Act who is found by the Administrator, on the basis of available information, to be in violation of the Act, or any regulation, order, license term or condition issued under the Act or this Part. Although no specific form is prescribed, the compliance order will contain:

(1) A concise statement of the facts determined to show a violation;

(2) A specific reference to the provisions of the Act, regulation, order or license determined to be violated; and

(3) The time period in which the person shall comply with the order.

(b) With respect to the time period for compliance with the order, the Administrator will specify a reasonable time period, up to 30 days, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(c) The compliance order will advise the person to whom it is issued that:

(1) Failure to comply within the specified time period will subject that person to adverse enforcement action under the Act (in addition to any such action already begun); and

(2) The order may be challenged during any enforcement proceeding brought under the Act as a result of the violation specified in the order or an alleged failure to comply with the order.

(d) The person to whom a compliance order is issued may seek amendment or modification of the order to conform to the facts or law as that person sees them by notifying the Administrator at the telephone number or address specified in the order. The Administrator will either amend the order, or decline to amend it, and will so notify the person concerned.

(e) Evidence of compliance with an order issued under this section shall be presented to the Administrator in writing within the time period specified in the order. The Administrator will, as soon as practicable, determine whether or not there is timely compliance with the order, and advise the person concerned of the determination.

(f) Issuing a compliance order under this section, or complying with such an order, does not preclude other enforcement proceedings under the Act or this Part if such proceedings serve the purposes of the Act, except if expressly so stated in the order, or as provided in section 111 of the Act with respect to license revocation.

§ 981.630 Observers.

(a) *Purpose of Observers.* Each licensee shall allow, at such times and to such extent as the Administrator deems reasonable and necessary, an observer (as used in this section, the term "observer" means "one or more observers") duly authorized by the Administrator to board, enter or accompany any OTEC facility or plantship to which a license applies, for the purposes of observing and reporting on:

(1) The effectiveness of the terms and conditions of the license;

(2) Compliance with the Act, regulations and orders issued under the Act, and the license terms and conditions; and

(3) The environmental and other effects of the licensee's activities under the license.

(b) *Notice to Licensee.*

(1) The Administrator may notify a licensee that the Administrator plans to place an observer in or aboard the OTEC facility or plantship to which the license applies.

(2) The Administrator normally will issue any such notice as far in advance of placement of the observer as is practicable.

(3) *Contents of Notice.* The notice given by the Administrator may include, among other things:

(i) the name of the observer, if known at the time the notice is issued;

(ii) the length of time which the observer likely will be in or aboard the OTEC facility or plantship;

(iii) information concerning activities the observer is likely to conduct; and

(iv) information concerning any special requirements for the handling, storage, location, or operation of, or the power supply for, equipment to be used by the observer.

(c) *Licensee's Response.* Upon request by the Administrator, each licensee shall promptly notify the Administrator regarding the suggested time and method for transporting the observer to the OTEC facility or plantship.

(d) *Duties of Licensee.* Each licensee of an OTEC facility or plantship to which an observer is assigned shall assure that the observer is provided:

(1) access to and use of the OTEC facility or plantship's communications equipment and personnel when the observer deems such access necessary for the transmission and receipt of messages;

(2) access to and use of the OTEC facility or plantship's navigation equipment and personnel when the observer deems such access necessary to determine the facility or plantship's location;

(3) All other reasonable cooperation and assistance to enable the observer to carry out the observer's duties; and

(4) temporary accommodations and food to the observer in or aboard the OTEC facility or plantship which are equivalent to those provided to officers or senior operations personnel of the OTEC facility or plantship.

(e) *Reasonableness of Observer activities.*

(1) To the maximum extent practicable, observation duties will be carried out in a manner that minimizes interference with the licensee's activities under the license.

(2) The Administrator will assure that equipment brought into or aboard an OTEC facility or plantship by the observer is reasonable as to size, weight, and electric power and storage requirements, taking into consideration the necessity of the equipment for carrying out the observer's functions.

(3) The observer will have no authority over the operation of the OTEC facility or plantship or its activities, or the officers, crew, or personnel of the OTEC facility or plantship. The observer will comply with all orders of the master or senior operations official which are necessary to ensure the safe operation of the OTEC facility or plantship and the safety of its personnel.

(f) *Non-interference with Observer.* Licensees and other persons are reminded that the Act (see, for example, sections 301(2) and 301(3)) makes it unlawful for any person subject to section 301 of the Act to interfere with any observer in the performance of the observer's duties.

(g) *Confidentiality of Information.* NOAA recognizes the possibility that an observer, in performing observer functions, will record information which the licensee considers to be proprietary. NOAA intends to protect such information consistent with applicable law. The Administrator may in appropriate cases provide the licensee an opportunity:

(1) to review those parts of the observer's reports which may contain proprietary information; and

(2) to request confidential treatment of such information under § 981.100 of this part.

§ 981.640 Advance notice of civil actions.

(a) *Actions against alleged violators.*

(1) No civil action may be filed in a United States district court under section 114 of the Act against any person for alleged violation of the Act, or any regulation, or license term or condition issued under the Act, until 60 days after the Administrator and any alleged violator receive written and dated notice of the alleged violation.

(2) The notice shall contain:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation or license allegedly violated; and

(iii) Any documentary or other evidence of the alleged violation.

(b) *Actions against the Administrator.*

(1) No civil action may be filed in a United States district court under section 114 of the Act against the Administrator for an alleged failure to perform any act or duty under the Act which is not discretionary until 60 days after the Administrator receives a written and dated notice of intent to file the action.

(2) The notice shall contain:

(i) A specific reference to the provisions of the Act, regulations or license believed to require the Administrator to perform a nondiscretionary act or duty;

(ii) A precise description of the act or duty believed to be required by such provisions;

(iii) A concise statement of the facts believed to show a failure to perform the act or duty; and

(iv) Any documentary or other evidence of the alleged failure to perform the act or duty.

Subpart G—Upper Limits on the Number or Total Capacity of OTEC Facilities and Plantships to be Licensed Under This Part [Reserved]

Subpart H—OTEC Site Evaluation and Preconstruction Testing Regulations [Reserved]

Subpart I—Procedures for Mediation of Disputes Among Licensees Regarding Interference Between OTEC Facilities or Plantships [Reserved]

[FR Doc. 81-22195 Filed 7-30-81; 8:45 am]
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federal register

Friday
July 31, 1981

Part V

Environmental Protection Agency

Pollutants; Delegation of Authority to Nebraska and Change of Address

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60 and 61

[A-7-FRL 1888-1]

New Source Performance Standards and National Emission Standards for Hazardous Pollutants; Delegation of Authority to the State of Nebraska and Change of Address

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The EPA is today amending its regulations on standards of performance for new stationary sources of air pollution and National Emission Standards for Hazardous Air Pollutants (NESHAPS) to reflect a change of address of the Nebraska Department of Environmental Control (DEC) and the Region VII office of the EPA, and to reflect a delegation to the DEC of NESHAPS.

EFFECTIVE DATE: July 31, 1981.

FOR FURTHER INFORMATION CONTACT: Steve A. Kovac, Air, Noise and Radiation Branch, U.S. Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, Missouri 64106; 816/374-6525; FTS 758-6525.

SUPPLEMENTARY INFORMATION: The DEC has been delegated authority to implement and enforce the federal New Source Performance Standards (NSPS) regulations for 25 stationary source categories and national emission standards for four hazardous air pollutants. An original delegation of 12 source categories was published in the **Federal Register** on December 30, 1976. A second delegation, affecting 13 additional source categories and four hazardous air pollutants, is published today elsewhere in the **Federal Register**. The amended § 60.4(a) and § 61.04(a) correct the address of the Region VII office of the EPA. The amended § 60.4(b) corrects the address of the DEC to which all reports, requests, applications, submittals, and communications to the Administrator, as required by 40 CFR Part 60, must also be submitted. The amended § 61.04(b) adds the address of the DEC to which information to the Administrator, as required by 40 CFR Part 61, must also be submitted.

The Regional Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional burdens are imposed upon the parties affected.

The delegation which influenced this Administrative amendment was effective on July 22, 1981, and it serves no purpose to delay the technical change of this address in the Code of Federal Regulations. This rulemaking is effective immediately, and is issued under the authority of Section 111 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Under Executive Order 12291, EPA must judge whether a rule is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. This rule is not a "major" rule, because it only corrects and supplements addresses to which sources are required to submit reports under existing requirements. Thus, it is unlikely to have an annual effect on the economy of $100 million or more or to have other significant adverse impacts on the national economy.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Dated: June 7, 1981.

William W. Rice,

Acting Regional Administrator, Region VII.

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. In § 60.4, paragraph (a) the address for Region VII is revised:

§ 60.4 Address.

(a) * * *

Region VII (Iowa, Kansas, Missouri, Nebraska), 324 East 11th Street, Kansas City, Missouri 64106.

* * * * *

2. In § 60.4, paragraph (b) is amended by revising paragraph (CC) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(CC) State of Nebraska, Nebraska Department of Environmental Control, P.O. Box 94877, State House Station, Lincoln, Nebraska 68509.

* * * * *

PART 61—NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANT

Part 61 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 61.04, paragraph (a) the address for Region VII is revised:

§ 61.04 Address.

(a) * * *

Region VII (Iowa, Kansas, Missouri, Nebraska), 324 East 11th Street, Kansas City, Missouri 64106.

2. In § 61.04, paragraph (b) is amended by adding Subparagraph (CC) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(CC) State of Nebraska, Nebraska Department of Environmental Control, P.O. Box 94877, State House Station, Lincoln, Nebraska 68509.

* * * * *

[FR Doc. 81-22350 Filed 7-30-81; 8:45 am]

BILLING CODE 6560-38-M

ENVIRONMENTAL PROTECTION AGENCY

[A-7-FRL 1888-1a]

Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); Delegation of Authority to State of Nebraska

Pursuant to Sections 111 and 112 of the Clean Air Act, as amended, the Administrator of the Environmental Protection Agency (EPA) has promulgated regulations establishing standards of performance for 34 categories of new stationary sources and national emission standards for five hazardous air pollutants. Sections 111(c) and 112(d) direct the Administrator to delegate his authority to implement and enforce NSPS and NESHAPS to any state which has submitted adequate procedures. The Administrator retains concurrent authority to implement and enforce the standards following delegation of authority to the state.

On November 24, 1975, the Regional Administrator delegated NSPS authority for 12 stationary source categories (40 CFR 60 Subparts D to O) to the State of Nebraska. This delegation was published in the **Federal Register** on December 30, 1976 (41 FR 56890). On January 8, 1981, the State of Nebraska submitted to the EPA regional office a request for delegation of authority for 13 additional stationary source categories (40 CFR 60 Subparts P to Z, AA, DD; primary copper smelters, primary zinc smelters, primary lead smelters, primary aluminum reduction plants, phosphate fertilizer industry, coal preparation plants, ferroalloy production plants, steel plants; electric arc furnaces, grain elevators) and the NESHAPS for four hazardous pollutants (40 CFR 61 Subparts B to E; asbestos beryllium, beryllium rocket motor fuel, mercury). The State of Nebraska intends to implement and enforce the requirements of 40 CFR 60, as amended through August 3, 1978, for 25 of the 34 source categories that have been promulgated, and the requirements of 40 CFR 61, as amended through April 6, 1973.

After a thorough review of the request, including a review of the state regulations which incorporate, by reference, the federal emission standards and testing procedures set forth in 40 CFR Parts 60 and 61, the regional office determined that a delegation was appropriate, subject to certain conditions. In a letter dated July 22, 1981, the regional office delegated the authorities as requested by the State of Nebraska.

The conditions upon which this delegation is based require that sources subject to NSPS and NESHAPS must provide all required notifications, conduct performance tests, and monitor emissions in accordance with the procedures specified in each applicable Subpart of 40 CFR Part 60 and 61. EPA concurrence must be obtained for all applicablilty determinations for which no clear precedent exists, to allow use of alternative or equivalent testing methods or to subdelegate this authority to a local air pollution control agency. Copies of Nebraska's request for delgation of authority and EPA's delegation letter are available for public inspection at the EPA Region VII Office, Air, Noise and Radiation Branch, 324 East 11th Street, Kansas City, Missouri, and at the office of the state NSPS implementing agency mentioned below.

Effective immediately, all reports, requests, applications, submittals and other communications required pursuant to the NSPS and NESHAPS categories should be submitted to Nebraska Department of Environmental Control, P.O. Box 94877, State House Station, Lincoln, Nebraska 68509. However, copies of notifications required pursuant to 40 CFR 60, Subpart A and 40 CFR 61, Subpart A shall also be submitted to the Director, Enforcement Division, at the EPA regional office mentioned above.

This notice is issued under the authority of Section 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Under Executive Order 12291, EPA must judge whether an agency action constitutes a "major" rule and is, therefore, subject to the requirements of a Regulatory Impact Analysis. This notice and the subject delegation are not "major" rules because they impose no new substantive regulatory requirements. The delegation merely authorizes the State of Nebraska to concurrently enforce pre-existing regulations formerly enforced by EPA. In any event, the delegation is unlikely to have an annual effect on the economy of $100 million or more or to have other significant adverse impacts on the national economy.

This notice was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Date: June 7, 1981.

William W. Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 81-22351 Filed 7-30-81; 8:45 am]

BILLING CODE 6560-38-M

federal register

Friday
July 31, 1981

Part VI

Environmental Protection Agency

Reduction of Paperwork Requirements Associated With the Hazardous Waste System

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 262, 263, 264, and 265

[SWH-FRL-1888-5]

Reduction of Paperwork Requirements Associated With the Hazardous Waste System

AGENCY: Environmental Protection Agency.

ACTION: Notice of preliminary decision concerning changes to rules.

SUMMARY: In May and June of 1980, the Environmental Protection Agency (EPA) received a conditional clearance under the Federal Reports Act from the Office of Management and Budget (OMB) for the reporting and recordkeeping requirements associated with the Resource Conservation and Recovery Act (RCRA) standards for generators, transporters, and treatment, storage and disposal (TSD) facilities. The condition for this clearance was to evaluate and review the paperwork requirements for possible burden reductions. The clearance was scheduled to expire on June 30, 1981. EPA has partially completed this required evaluation and review, and has made certain preliminary decisions concerning changes to information-related requirements. As a result of this activity, the clearance has been extended to September 30, 1981. The purpose of this notice is to alert the public to the nature of these proposed changes and to EPA's continuing activities to further reduce the paperwork burdens associated with the hazardous waste regulatory system.

ADDRESS: A single copy of EPA's preliminary report is available from Ed Cox, Solid Waste Information, USEPA, 26 West St. Clair Street, Cincinnati, Ohio 45268; (513) 684-5362.

FOR FURTHER INFORMATION CONTACT: Jeffrey Goodman, Chief, Analysis Branch, Office of Solid Waste, (WH-562), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460, (202) 755-9180.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6901 *et seq.*, EPA promulgated regulations on May 19, 1980, establishing a comprehensive regulatory program for the management and control of hazardous wastes (see 40 CFR Parts 260-265 and 122-124, 45 FR 33066).

The paperwork requirements under the RCRA standards for generators, transporters, and treatment, storage and disposal facilities include one-time and ongoing reporting and recordkeeping requirements necessary to implement the program and establish a data base to monitor program compliance. Major components of these paperwork requirements include the following:

All handlers of hazardous waste must notify EPA and receive identification numbers (see Section 3010). Each generator must initiate a manifest with each shipment of waste, containing waste information and an EPA identification number. This manifest is to be carried by the transporter, to the facility owner or operator and returned to the generator. Copies of the manifest are to be retained as records by all handlers (see Section 3002).

All treatment, storage, and disposal facilities and generators must submit annual reports on their hazardous waste activities during the previous calendar year and retain copies of these reports as records (see Section 3002, 3004). In addition, treatment, storage, and disposal facilities must prepare and submit applications for permits to operate a hazardous waste management facilities under the full facility standards (see Section 3005). All facilities must maintain personnel files, records of training procedures, and a daily operating record which includes a description of shipments received, procedures followed and incidents which occur (see Section 3004).

Facilities must also prepare and maintain contingency plans and closure plans, with estimates for the cost of closure care. Where post-closure care is required, plans and costs estimates for this care must be prepared and maintained (see Section 3004).

Finally, the standards require facilities to notify EPA concerning the establishment of financial instruments to assure closure and post-closure care (see Section 3004).

Rather than expend its limited resources analyzing the more than 30 individual paperwork requirements, EPA has concentrated on the seven largest information collection activities in order to achieve the greatest possible burden reduction. Together, these seven requirements account for approximately 80 percent of the information burden on the regulated community. They are the following:

Annual Report (for generators and facilities)
Manifest System Information Requirements
Permitting Requirements (Part B) for Storage Facilities
Operating Record
Groundwater Monitoring Recordkeeping and Reporting
Closure/Post-Closure and Financial Assurance—Recordkeeping and Reporting Requirements
Contingency Plan

EPA has developed specific preliminary proposals regarding the annual report, the manifest system and the permitting requirements. In the four remaining areas, EPA has identified further possibilities for information burden reduction.

EPA's examination of the paperwork burden will continue in these remaining areas. At the same time, EPA is also reviewing its RCRA regulations to identify areas where a "degree/class of hazard" approach may be incorporated into the regulation to a greater extent. Once the paperwork reduction examination in the remaining four areas has been completed and integrated with the class of hazard analysis, EPA expects to prepare final proposals for paperwork reduction by September.

During the pendency of this review and the regulatory process to change the regulation, of course, the present requirements remain in full force and effect.

II. Results of Preliminary Analysis

A. *Annual Report* (40 CFR 262.41, 264.75, and 265.75)

The Agency plans to eliminate the current requirement that all generators and all owners or operators of hazardous waste facilities file an annual report summarizing their activities related to hazardous waste management. In its place, EPA plans to substitute an annual survey of generators and facilities. The survey would be sent each year to a statistical sample of both the generator and facility populations.

The authority for the use of an annual survey comes from Sections 3002, 3004, and 3007 of the statute.

The benefits associated with replacing annual reporting requirements with a sample survey approach are significant. First and foremost, this approach will greatly reduce reporting requirements on the regulated community. In fact, we estimate the burden reduction for annual reporting requirements to be in the range of 90 to 95 percent—from roughly 290,000 hours down to approximately 26,000 hours. Two factors account for this reduction. First, only 10 percent or less of the total number of generators and facilities will be affected at all in any given year. Second, the survey forms are substantially simplified and therefore less

burdensome to complete than the current annual report forms.

In addition, the survey approach will significantly reduce EPA's processing costs. This reduction will allow a more complete and systematic compilation and analysis of the hazardous waste data received through the survey. Finally, this approach will result in more representative statistics because the survey will go out to a statistically representative sample of facilities and generators in all states. The Subtitle C program provides for the authorization of state hazardous waste programs, in lieu of the Federal program, where the state program is substantially equivalent to the Federal program. Using the current annual reporting mechanism, however, EPA would receive reports only from hazardous waste handlers in states where EPA is operating the program, i.e., in non-authorized states. Thus, over the years EPA would only be collecting information directly from the handlers in the handful of states which do not receive authorization to run their own hazardous waste programs. Such a report may not yield nationally representative information.

B. *Manifest System* (40 CFR 262.20–262.23, 263.20, 264.71, and 265.71)

The Agency expects to replace the general information requirements for what data must appear on manifests with a prescribed uniform manifest form. Current regulations do not set forth a required form for the manifest system. The Agency's original intent was to set up a manifest requirement with enough flexibility to allow States and industry to design specific documents to fulfill specific needs.

The current system is causing two problems. First, the lack of uniformity in the manifests required by the States has created situations in which generators and transporters must fill out and carry multiple manifest forms when wastes are shipped interstate. Currently, a transporter carrying a hazardous waste shipment across state lines must comply with the manifest system operating in each state. This means that a transporter traveling through a state must have in his possession the manifest required in that state. Under these conditions, several manifests could be necessary to transport one load of hazardous waste interstate.

Second, generators with plants in more than one state cannot consolidate and standardize their manifesting procedures company-wide because of a lack of uniform requirements. This situation results in a failure to achieve efficiency in information collection activities in all multistate corporations in the country which are currently regulated by RCRA.

To solve these problems—all of which give rise to unnecessary paperwork burdens—EPA has been working with the Association of State and Territorial Solid Waste Management Officials and the Hazardous Materials Advisory Council, which represent the States and industry, respectively, in developing a uniform manifest system. Although the exact burden reduction which will accrue from this project is difficult to calculate due to uncertainties in the number of interstate waste shipments and the actual economies of scale achievable by multi-state corporations not having multiple requirements with which to comply, EPA believes, nonetheless, that burden reduction can be significant by adopting uniform manifest requirements.

In addition to a uniform manifest form, EPA is developing a proposal for a permanent manifest which could be used in certain cases as an alternative to the existing manifest system. This alternative is designed to reduce the administrative burden on generators in cases where the same wastes are shipped by generators to off-site facilities which they own.

In lieu of the existing system which requires a separate manifest for each waste shipment, a permanent manifest would be carried by the transporting vehicle every time a shipment of this same waste occurred. The permanent manifest would include all manifest information and identify the route the vehicle would travel. The generator and hazardous waste management facility would also be required to establish a waste tracking system that would identify the quantity for each shipment (e.g., shipment log).

Notice of intent to use this alternative system would be sent to EPA prior to initiation, and would include a copy of each permanent manifest and an explanation of the waste tracking system.

This alternative system provides for a simpler and more practical approach to the manifest requirement when a generator and hazardous waste facility are owned or operated by the same person. A large measure of the paperwork in such situations would be eliminated through the discontinuation of manifest preparation for each and every shipment of the same waste. In addition, there would be reduced recordkeeping due to the need to keep only a copy of the shipping log rather than each individual manifest.

Establishment and implementation of this alternative manifest system requires Department of Transportation concurrence and joint rulemaking. A final joint proposal for a permanent manifest is expected to be developed in conjunction with the uniform manifest form proposal.

C. *Permitting Requirements* (40 CFR 122.4)

Using a class of hazard approach, the Agency plans to reduce the information requirements for permit applications and permit procedures for lower risk hazardous waste storage facilities. Storage facilities have been targeted for permit process burden reduction for two reasons. First, such facilities represent a highly significant portion of hazardous waste facilities. Preliminary analysis of the approximately 14,000 Part A permit applications received by EPA indicates that roughly 40 percent of all applications only involve storage of hazardous wastes in tanks or containers. Second, storage facilities, if properly run, represent in general a lower public health and environmental risk than disposal facilities.

Under this proposal, Part B permit applications and permitting procedures would be tailored to the degree of risk posed by the various categories of storage facility. In the case of very low risk storage facilities, no permit application would be required. If facility owners or operators use appropriate Department of Transportation containers and notify EPA that they fall in this category, then such facilities would be granted a permit by rule.

For moderate risk storage facilities, EPA would develop a standardized and simplified Part B permit application. Certain technical information required in an application would be obtained through statements to be filled in or checked by the applicant (e.g., the distance to firefighting equipment is —— feet). Certain other technical and administrative information required in an application (e.g., the contingency plan) would be provided by self-certification that such information is available at the facility and does comply with the requirements of the regulations.

For high risk facilities, the Part B permit application requirements currently in effect and the normal permit procedures would remain in effect owing to the greater risks involved.

The benefits of this approach are obvious. Low risk facilities will not have to submit any Part B permit applications. As a result, the paperwork burden associated with permit application for this class of facility will be completely eliminated. Although the exact number of low risk storage facilities is unknown, the burden

reduction should be significant. Burden reduction will also accrue from the simplified permit applications for moderate risk facilities. And although not strictly a paperwork burden, permitting process burdens for moderate risk facilities also will be significantly reduced by the expedited procedures which will be adopted.

III. Other Areas of Analysis

A. *Operating Record* (40 CFR 264.73, 265.73)

EPA will review the current operating record requirements with the objective of reducing the information burden in two major areas. First, the number of handling codes to be used in the operating record should be reduced to agree with the number used in the permitting process. Facilities must currently utilize a table of 85 handling codes to identify the management techniques applied to each waste. Facility permits, however, utilize only 13 handling codes. Furthermore, the proposed annual survey will collect information based upon those 13 codes. Continuing to require facilities to keep records based on the 85 codes when the Agency intends to analyze their operations using only 13 codes seems questionable.

Second, the operating record requirements mandate that facilities keep copies of a number of reports that result in duplication of records kept in other locations. Examples include summary reports of emergency incidents and notices of certification of compliance with permit requirements. Copies of these reports may be kept more appropriately in another location instead of placing this burden on the facility.

Additional possibilities for burden reduction may be discovered as a result of the class of hazard analysis scheduled for completion in late summer. In large measure, however, the facility operating records form a keystone to the entire hazardous waste regulatory system. Not only does the waste-specific information included in the operating record provide the basis upon which facilities can comply with the various reporting requirements of the regulations, it also constitutes a key element in the framework of documenting the actual management of hazardous wastes from generation through transportation to final disposition.

B. *Groundwater Monitoring* (40 CFR 265.94)

EPA will review the groundwater monitoring requirements as part of the class of hazard analysis. EPA, however, does not expect possibilities for major burden reduction in the groundwater monitoring requirements. Protection of groundwater against contamination from releases of hazardous wastes or hazardous waste constituents is a major objective of RCRA. Years of negligence in guarding against groundwater contamination have led to the closing of countless wells used by individuals and public utilities as sources of drinking water. These impacts are long-term in nature, and may ultimately produce irreversible damage to our groundwater resources.

In this context, the groundwater monitoring requirements affect only a small subset of the population of hazardous waste management facilities, i.e., an estimated 4,500 landfill, injection well, surface impoundment (for storage, treatment and disposal) and land treatment facilities. Furthermore, there is provision for facilities to obtain a waiver from compliance with any of the groundwater regulations, upon demonstration of low potential for migration of contaminants to water supply wells.

Moreover, EPA has tried to minimize the burden of groundwater monitoring with a minimum indicator program leading to assessment monitoring only if problems are detected. However, EPA has a continuing concern that the funds which industry expends on groundwater monitoring pursuant to this regulation lead to information useful to the facilities and to environmental officials. To get maximum use of the data EPA plans to issue further guidance to facilities on how they can be sure of getting sound advice from their hydrogeologists and drillers. EPA will also undertake a timely evaluation of the groundwater monitoring requirements to ensure that industry and agencies are getting the most from the expenditure of funds in this area.

C. *Closure/Post-Closure and Financial Assurance Requirements* (40 CFR 264.112–264.120, 264.142–264.151, 265.112–265.120, 265.142–265.151)

EPA will review two elements of the closure/post-closure and financial assurance requirements which may be unnecessarily burdensome to the regulated community. First, the requirement that post-closure cost estimates be adjusted to reflect changes in the post-closure plan during the post-closure period should be reconsidered. Since during the post-closure period, the amount of the financial instrument adjustment is no longer required and does not appear in the final regulation, this requirement could possibly be eliminated.

Second, the requirement that both a copy of the insurance policy and endorsement be forwarded to the Regional Administrator by all owners or operators may not be necessary. The receipt of the endorsement alone would be sufficient evidence of insurance. A sampling of policies, however, may be necessary to determine whether there is a need to make coverage requirements more specific.

D. *Contingency Plan* (40 CFR 264.52–264.56, 265.51–265.56)

The Agency will review the contingency plan requirements to assess whether they fully address the variety of hazards posed by different facilities applying different processes to different waste streams.

The purpose of the contingency plan requirement is to ensure that treatment, storage and disposal facilities are prepared to address emergency situations rapidly and in such a manner so as to limit or prevent injuries or possible hazards to human health or the environment. Because the contingency plan requirement is a performance standard which takes into account varying circumstances related to waste management, the owner/operator already has the authority to tailor his approach to a variety of hazards. It may, however, make sense to clearly and explicity identify situations where less regulation is required.

Through the degree of hazard analysis, EPA will attempt to tailor contingency plan requirements to classes of wastes. Wastes which pose lower risks of unplanned emergencies, such as non-ignitable or compatible wastes in storage situations, may be the subject of less stringent contingency plan requirements.

IV. Conclusion

Based on the results of this preliminary examination of the reporting and recordkeeping requirements, EPA is certain that information burden reductions can be made. The Agency is continuing its efforts to identify burden reduction targets and has developed the following scheduled for completing the analysis and forwarding necessary regulatory modifications to OMB.

Paperwork requirement	Completion date
Annual Report	July 1981.
Manifest System	Sept. 1981
Permitting Requirements	Sept. 1981
Operating Record	Sept. 1981
Groundwater Monitoring	Sept. 1981
Closure/Post-Closure and Financial Assurance Requirements.	Sept. 1981
Contingency Plan	Sept. 1981

A single copy of the preliminary report is available from Ed Cox, Solid Waste Information, USEPA, 26 West St. Clair Street, Cincinnati, Ohio 45258; (513) 684–5362.

Dated: July 24, 1981.

Anne M. Gorsuch,

Administrator.

[FR Doc. 81-22373 Filed 7-30-81; 8:45 am]

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Last Listing July 27, 1981

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