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Tuesday
September 29, 1981

Highlights

47720 **Surface Coal Mining** Interior/SMREO revises prime farmland grandfather rules. (Part II of this issue)

47536 **Indians—Lands** Interior/BIA revises regulations on land records and title documents.

47724 **Aged** EEOC issues final interpretations of the Age Discrimination in Employment Act. (Part III of this issue)

47744 **Handicapped** ATBCB extends comment period on proposed rescission of minimum guidelines and requirements for Federal and federally-funded buildings. (Part V of this issue)

47539 **Veterans** VA amends disability compensation and survivors' benefits regulations.

47539 **Health Insurance** DOD amends wig/hairpiece regulations under the Civilian Health and Medical Program of the Uniformed Services.

47730, 47740 **Over-the-Counter Drugs** HHS/FDA revises review and classification procedures for Category III products and issues drug review policy statement. (Part IV of this issue) (2 documents)

47623 **Blood** HHS/FDA clarifies proposed labeling requirements for blood and blood components.

CONTINUED INSIDE

Highlights

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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.

47692 **Government Securities** Treasury invites tenders for bonds of 2001.

47649 **Imports** CITA adjusts restraint levels for certain man-made fiber apparel products from the Republic of Korea.

47695 **Sunshine Act Meetings**

Separate Parts of This Issue

47720 **Part II, Interior/SMREO**
47724 **Part III, EEOC**
47730 **Part IV, HHS/FDA**
47744 **Part V, ATBCB**

Contents

Federal Register
Vol. 46, No. 188
Tuesday, September 29, 1981

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
47588 Memphis, Tenn. et al.
47588 Tennessee Valley et al.; hearing rescheduled
47585 Onions grown in Idaho and Oregon

Agriculture Department
See Agricultural Marketing Service; Forest Service; Rural Electrification Administration.

Architectural and Transportation Barriers Compliance Board
PROPOSED RULES
47744 Handicapped persons; accessible design standards for Federal agencies; minimum guidelines and requirements; rescission; extension of time

Army Department
See also Engineers Corps.
NOTICES
Land transfer:
47647 Gathright Dam and Lake Moomaw, Va.
Meetings:
47650 Army Science Board

Civil Aeronautics Board
NOTICES
47648 Certificates of public convenience and necessity and foreign air carrier permits
47695 Meetings; Sunshine Act

Commerce Department
See National Oceanic and Atmospheric Administration.

Commodity Futures Trading Commission
NOTICES
47695 Meetings: Sunshine Act

Defense Department
See also Army Department; Engineers Corp.
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
47539 Wig/hairpieces
PROPOSED RULES
Civilian health and medical program of uniformed services (CHAMPUS):
47624 Residential treatment centers; elimination as authorized providers; extension of time; correction

Drug Enforcement Administration
NOTICES
Registration applications, etc.; controlled substances:
47676 Abbott Laboratories

Education Department
NOTICES
Meetings:
47651 Excellence in Education National Commission

Employment and Training Administration
NOTICES
Adjustment assistance:
47677 Garon's Knitting Mills, Inc.
47678 Leo Paley, Inc.
47678 Pacific Northwest Cedar Products, Inc.
47678 Post Shake Co., Inc.
47679 Saginaw Shingle Co.
47679 S. W. Evans & Sons

Energy Department
See also Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Western Area Power Administration.
NOTICES
International atomic energy agreements; civil uses; subsequent arrangements:
47652 European Atomic Energy Community

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
47650 Orleans Parish, La.; dredge drainage canals and lakes and install fill for residential and commercial development
47651 Prairie and Silver Creeks Flood Control Project, Grand Island, Nebr.

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
47544 Delaware
47545 Iowa
47544 Texas
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
47546 Ethephon
47547 N,N-diethyl-2-(1-napthalenyloxy)propionamide
Pesticides; tolerances in animal feeds:
47535 Ethephon
Pesticides; tolerances in food:
47533 Ethephon
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
47624 Arizona
Hazardous waste programs; interim authorization; various States:
47626 Wisconsin; hearing; etc.
NOTICES
Air quality; prevention of significant deterioration (PSD):
47660 Permit approvals
Meetings
47660 Motor vehicle compliance program; workshop
Pesticides; temporary tolerances:
47660 5-ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole and its metabolite
47659 Glyphosate

Toxic and hazardous substances control:
47658 Premanufacture notices receipts
47657 Premanufacture notification requirements; test marketing exemption applications

Equal Employment Opportunity Commission
RULES
Age discrimination in employment:
47724 Final interpretations

Federal Communications Commission
NOTICES
47695, 47697 Meetings; Sunshine Act (3 documents)

Federal Emergency Management Agency
PROPOSED RULES
Flood elevation determinations:
47627 Arizona et al.
47632 Connecticut et al.
47648 Illinois et al.
47644 New Hampshire et al.

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
47652 McFadden, Eugene J. M.
47698 Meetings; Sunshine Act

Federal Home Loan Bank Board
NOTICES
47699 Meetings; Sunshine Act (2 documents)

Federal Maritime Commission
NOTICES
47661 Agreements filed, etc. (2 documents)
Complaints filed:
47661 Belco Petroleum Corp. et al.
47661 Tractors & Farm Equipment Limited et al.
Energy and environmental statements; availability, etc.:
47662 Maryland Port Administration; interpretation of term "cargo"
47662 Overcharge claims, time limit for filing
47662 Sea-Land Service, Inc.; per-container rates in tariff filing requirements

Federal Reserve System
NOTICES
Applications, etc.:
47663 Citizens Financial Corp.
47663 Findlay Bankshares, Inc.
47663 Huntsville Bancshares, Inc.
47664 Iuka Bancshares Corp.
47664 Jefferson Bancorp, Inc.
47664 Kellonto Bankshares Corp.
47664 Mansfield Bancshares, Inc.
47664 Northwest Bancorporation of Arkansas, Inc.
47664 Ozark Bankshares, Inc.
47665 Peoples Corp.
Bank holding companies; proposed de novo nonbank activities:
47662 Farmers Enterprises, Inc., et al.
47699 Meetings; Sunshine Act (2 documents)

Federal Trade Commission
PROPOSED RULES
Prohibited trade practices:
47619 Volkswagen of America, Inc.

Fish and Wildlife Service
RULES
Fishing and hunting:
47580 Benton Lake National Wildlife Refuge, Mont., et al.
Hunting:
47578 Arrowwood National Wildlife Refuge et al., N. Dak.
47574 Barnegat National Wildlife Refuge, N.J., et al.
47559 Bombay Hook National Wildlife Refuge, Del., et al.
47558 Bombay Hook National Wildlife Refuge, et al., Del.
47553 Chassahowitzka National Wildlife Refuge, Fla., et al.
47576 Iroquois National Wildlife Refuge, N.Y., et al.
47583 Kootenai National Wildlife Refuge, Idaho
47577 Mattamuskeet National Wildlife Refuge, N.C., et al.
47566 Oxbow National Wildlife Refuge, Mass., et al.
47564 Parker River National Wildlife Refuge, Mass., et al.
47562 Reelfoot National Wildlife Refuge, Ky., et al.
47549 Salt Plains National Wildlife Refuge, Okla., et al.
47567, 47570 Seney National Wildlife Refuge, Mich., et al. (2 documents)
47551 St. Marks National Wildlife Refuge, Fla., et al.
47548, 47554, 47556 Sequoyah National Wildlife Refuge, Okla., et al. (3 documents)

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
47534 Nitarsone
Color additives:
47533 D&C Green No. 6; provisional listing; postponement of closing date
47532 Grape color extract; nonbeverage food use; exemption certification
Human drugs:
47730 Over-the-counter (OTC) category III policy; authorization for ingredient marketing or other product condition after monograph establishment
PROPOSED RULES
Biological products:
47623 Blood and blood components; labeling requirements; clarification
NOTICES
Color additives:
47665 Anti-serum products, green coloring agent
Human drugs:
47740 Over-the-counter (OTC) drug review; policy statement
Meetings:
47665 Advisory committees, panels, etc.; changed meeting

Forest Service
NOTICES
Land transfer:
47647 Gathright Dam and Lake Moomaw, Va.

Health and Human Services Department
See Food and Drug Administration; Public Health Service.

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
47653–47655 Decisions and orders (3 documents)
Remedial orders:
47655 Objections filed

Indian Affairs Bureau
RULES
47536 Indian lands; land records and title documents

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office.

International Trade Commission
NOTICES
47699 Meetings: Sunshine Act

Interstate Commerce Commission
NOTICES
Motor carriers:
47672, 47675 Permanent authority applications (2 documents)
47669 Permanent authority applications; restriction removals
Railroad services abandonment:
47671 Burlington Northern Railroad Co.
47672 Chessie System Railroads
47668 Detroit, Toledo & Ironton Railroad Co.
47668 Grand Trunk Western Railroad Co.
47668 Illinois Central Gulf Railroad Co.

Justice Department
See Drug Enforcement Administration.

Labor Department
See also Employment and Training Administration; Labor Statistics Bureau; Mine Safety and Health Administration; Pension and Welfare Benefit Programs Office; Wage and Hour Division.
NOTICES
Adjustment assistance (Editorial note: See entries under Employment and Training Administration)

Labor Statistics Bureau
NOTICES
Meetings:
47677 Business Research Advisory Council
47677 Business Research Advisory Council Committees

Land Management Bureau
RULES
Public land orders:
47548 California; correction
NOTICES
Environmental statements; availability, etc.:
47666 Lakeview District grazing management program, Oreg.
47667 Prairie potholes vegetation allocation, Mont.
Meetings:
47666 Boise District Grazing Advisory Board
47667 Outer Continental Shelf Advisory Board

Mine Safety and Health Administration
NOTICES
Petitions for mandatory safety standard modifications:
47679 Eastern Associated Coal Corp.
47680 Multi Mineral Corp.
47680 Peabody Coal Co.

National Oceanic and Atmospheric Administration
NOTICES
Marine mammal permit applications, etc.:
47649 Costa, Dr. Daniel P.

National Science Foundation
NOTICES
47687 Antarctic Conservation Act of 1978; permit applications, etc.
Meetings:
47687 Advisory Council

National Transportation Safety Board
NOTICES
47699 Meetings; Sunshine Act

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
47688 Consumers Power Co.
Environmental statements; availability, etc.:
47688 Edgemont Uranium Mill, Fall River County, S. Dak., et al.; uranium mill tailings removal
47700 Meetings; Sunshine Act
47687 Regulatory guides; issuance and availability; correction
Reports; availability, etc.:
47687 Control room design reviews; availability of guidelines

Pension and Welfare Benefit Programs Office
RULES
Employee benefit plans:
47584 Suspension of benefit rules; deferral of effective date
NOTICES
Employee benefit plans; prohibited transaction exemptions:
47681 American Medical International, Inc.
47682 Construction Industry Retirement Plan of Rockford, Ill.
47683 Dial Import Corp. Employees Pension Trust
47683 Merrill Lynch Realty Commercial Services, Inc.
47684 Sherwood Industries, Inc.
Employee benefit plans; proposed alternative methods of compliance:
47685 W. T. Grant Co.

Public Health Service
NOTICES
47666 Health maintenance organizations, qualified; list; correction (2 documents)

Reclamation Bureau
NOTICES
Contract negotiations:
47667 Fort Clark Irrigation District, Pick-Sloan Missouri Basin Program, Mo.
47668 Shoshone Project, Wyo.

Rural Electrification Administration
RULES
Electric borrowers:
47531 Construction, operation, and maintenance of electric lines on Forest Service lands (Bulletin 80–8); rescission
NOTICES
Environmental statements; availability, etc.:
47647 N.W. Electric Power Cooperative, Inc.
47648 Pointe Coupee Electric Membership Corp.

Securities and Exchange Commission
RULES
47531 Procedural regulations; Commission investigative authority
NOTICES
Hearings, etc.:
47688 Capitol Life Insurance Co. et al.
47691 Tenneco Inc.
Self-regulatory organizations; proposed rule changes:
47690 Pacific Stock Exchange Inc.

Surface Mining Reclamation and Enforcement Office
RULES
Permanent regulatory program:
47720 Prime farmland, grandfather exemption; removal of cut-off date

Synthetic Fuels Corporation
NOTICES
47692 Computer services; request for proposals

Textile Agreements Implementation Committee
NOTICES
Man-Made textiles:
47649 Korea

Treasury Department
NOTICES
Bonds, Treasury:
47692 2001 series

Veterans Administration
RULES
Adjudication; pensions, compensation, dependency, etc.:
47539 Disability compensation and survivors benefits; rate increases, pension reduction, retired pay waiver, etc.
NOTICES
Environmental statements; availability, etc.:
47694 Augusta, Maine; Maine Veterans Memorial Cemetery expansion
47694 New York, N.Y.; rehabilitation engineering and outpatient clinic

Wage and Hour Division
NOTICES
47686 Learners, certificates authorizing employment at special minimum wages

Western Area Power Administration
NOTICES
Power rate adjustments:
47655 Central Valley Project

MEETINGS ANNOUNCED IN THIS ISSUE

DEFENSE DEPARTMENT
Army Department—
47650 Army Science Board, Washington, D.C. (closed), 10–15 and 10–16–81
Engineers Corps—
47651 Flood control project on Prairie and Silver Creeks, Grand Island, Nebr. (open), 10–23–81
47650 New Orleans East, Inc., New Orleans, La. (open), 10–14–81

EDUCATION DEPARTMENT
47651 Excellence in Education, National Commission, Washington, D.C. (open), 10–9–81 (10–10–81, tentative)

INTERIOR DEPARTMENT
Land Management Bureau—
47666 Boise District Grazing Advisory Board, Boise, Idaho (open), 11–5 and 11–6–81
47667 Outer Continental Shelf Advisory Board, Scientific Committee, Los Angeles, Calif. (open), 10–28 through 10–30–81

LABOR DEPARTMENT
Labor Statistics Bureau—
47677 Business Research Advisory Council, Washington, D.C. (open), 10–21–81
47677 Business Research Advisory Council, Washington, D.C. (all sessions open):
—Employment and Unemployment Committee, 10–20–81;
—Occupational Safety and Health Committee, 10–15–81;
—Price Indexes Committee, 10–19–81;
—Wages and Industrial Relations Committee, 10–20–81

NATIONAL SCIENCE FOUNDATION
47687 Advisory Council, Task Group # 19, Washington, D.C. (open), 9–30–81

CHANGED MEETINGS

ENVIRONMENTAL PROTECTION AGENCY
47660 Motor vehicle compliance program, Arlington, Va. (open), 9–30 and 10–1–81, postponed indefinitely

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration—
47665 Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, Dental Device Section, Silver Spring, Md. changed to Rockville, Md. (open), 10–2–81, format: telephone conference call

HEARING

ENVIRONMENTAL PROTECTION AGENCY
47626 Wisconsin hazardous waste management program, Madison, Wis., 10-30-81

CHANGED HEARING

AGRICULTURE DEPARTMENT
Agricultural Marketing Service—
47588 Tennessee Valley, Louisville-Lexington-Evansville and Nashville, Tennessee, milk orders, Louisville, Ky., 10-6-81 rescheduled for 10-21-81, location change

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
1701 47531
Proposed Rules:
958 47585
1011 47588
1046 47588
1097 47588
1098 47588
1102 47588
1108 47588

16 CFR
Proposed Rules:
13 47619

17 CFR
202 47531

21 CFR
73 47532
81 47533
193 47533
330 47730
558 47534
561 47535
Proposed Rules:
606 47623

25 CFR
120 47536

29 CFR
1625 47724
2530 47584

30 CFR
716 47720
785 47720

32 CFR
199 47539
Proposed Rules:
199 47624

36 CFR
Proposed Rules:
1190 47744

38 CFR
3 47539

40 CFR
52 (3 documents) 47544, 47545
180 (2 documents) 47546, 47547
Proposed Rules:
52 47624
123 47626

43 CFR
Public Land Orders:
5989 47548

44 CFR
Proposed Rules:
67 (4 documents) 47627–47644

50 CFR
32 (19 documents) 47548–47583
33 47580

Rules and Regulations

Federal Register
Vol. 46, No. 188
Tuesday, September 29, 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.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1701

Public Information; Appendix A—REA Bulletins; Construction, Operation and Maintenance of Electric Lines

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends Appendix A— REA Bulletins to provide for the rescission of REA Bulletin 80–8, "Construction, Operation and Maintenance of Electric Lines on Land Administered by the United States Forest Service," issued May 9, 1956, and the supplement to Bulletin 80–8 issued on January 27, 1964. This bulletin has become obsolete; the information is not considered useful enough to justify revising the bulletin.

EFFECTIVE DATE: September 18, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Dedman, telephone (202) 447–7040. A Final Impact Statement has been prepared and is available from the Director, Engineering Standards Division, Rural Electrification Administration, Room 1270–S, U.S. Department of Agriculture, Wahington, D.C. 20250.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA hereby amends Appendix A—REA Bulletins to provide for the rescission of REA Bulletin 80–8, "Construction, Operation and Maintenance of Electric Lines on Land Administered by the United States Forest Service," and the supplement to Bulletin 80–8. This final action has been issued in conformance with Executive Order 12291, Federal Regulation. Since no significant effect on the economy will occur; since no significant increase in costs for consumers, industries or Government will result; and since no significant impact on economic conditions will be caused, this action has been determined to be "not major."

The Regulatory Flexibility Act (Pub. L. 96–354) does not apply to this action; therefore, a Regulatory Flexibility Analysis has not been prepared.

This action eliminates the bulletin which has become obsolete. When an REA borrower proposes to construct facilities on land owned by the U.S. Forest Service, a permit must be obtained. The requirements for obtaining the permit are explained to the borrower by the Forest Service when a permit application is made. Repetition of the requirements in REA Bulletin 80–8 is a needless duplication of paperwork which should be eliminated.

A Notice of Proposed Rulemaking was published in the **Federal Register** on May 19, 1981, Volume 46, Number 96, Page 27344. However, no public comments were received in response to the notice.

(Catalog of Federal Domestic Assistance 10.850, Rural Electrification Loans and Loan Guarantees)

Dated: September 18, 1981.

Harold V. Hunter,

Administrator.

[FR Doc. 81–28204 Filed 9–28–81; 8:45 am]
BILLING CODE 3410–15–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 202

[Release Nos. 33–6345; 34–18108; 35–22201; 39–657; IA–776; IC–11948]

Commission Investigative Authority

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending the statement of its informal and other procedures by revising the section on enforcement activities to conform it with the governing statutes by providing that the Commission may, in its discretion, makes such investigations as it deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of the federal securities laws, the rules or regulations thereunder, or the rules of a self-regulatory organization of which the person is a member or participant.

EFFECTIVE DATE: September 29, 1981.

FOR FURTHER INFORMATION CONTACT: Andrew W. Sidman, Office of the General Counsel, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272–2454.

SUPPLEMENTARY INFORMATION: Section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a), empowers the Commission to, "in its discretion, make such investigations as it deems necessary to determine whether any person has violated, is violating, or is about to violate" that Act, the rules or regulations thereunder, or the rules of a self-regulatory organization of which the person is a member or participant.[1] Section 202.5(a) of the Commission's Informal and Other Procedures, 17 CFR 202.5(a), which was published to provide to the public information about the Commission's usual operations, stated that its staff ordinarily referred matters to the Commission for a formal investigation when it appears that "there is a likelihood that a violation has been or is about to be committed and that the issuance of process may be necessary." That language has been viewed by some as imposing upon the Commission a standard different than the statutes governing the Commission's investigatory powers, even though that Section is simply a "brief description of [a] procedure [ ] generally followed by the Commission which [has] not been formalized in rules," which the Commission published to "aid the public and facilitate the execution of the Commission's functions," 17 CFR 202.1(c), and has not been and is not intended to impose substantive limitations upon the Commission's investigatory powers.

The Commission has determined to eliminate any confusion resulting from any possible differences between the

[1] Similar provisions are contained in Section 20(a) of the Securities Act of 1933, 15 U.S.C. 77t(a); Section 18(a) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79r(a); Section 209(a) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-9(a); and Section 42(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-41(a).

governing statutes and the Commission's informal description of its procedures by amending § 202.5(a) to conform with those statutes. This amendment will not have any effect on the procedures or standards by which the Commission reaches a determination, in its discretion, whether to initiate an investigation. The Commission will continue carefully to examine each matter in which it determines to authorize a formal investigation to assure that its statutory mandate is fulfilled.

Procedural Matters

Since § 202.5(a) is an informal statement of agency procedure, the requirements of Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, are inapplicable.

No regulatory flexibility analysis (or certification that one is not required) is necessary because § 202.5(a) is not a "rule" within the meaning of Section 601(2) of the Administrative Procedure Act, 5 U.S.C. 601(2).

PART 202—INFORMAL AND OTHER PROCEDURES

Text of Amendment

Part 202 of Title 17 of the Code of Federal Regulations is amended by revising paragraph (a) of § 202.5 to read as follows:

§ 202.5 Enforcement activities.

(a) Where, from complaints received from members of the public, communications from Federal or State agencies, examination of filings made with the Commission, or otherwise, it appears that there may be violation of the acts administered by the Commission or the rules or regulations thereunder, a preliminary investigation is generally made. In such preliminary investigation no process is issued or testimony compelled. The Commission may, in its discretion, make such formal investigations and authorize the use of process as it deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of the federal securities laws or the rules of a self-regulatory organization of which the person is a member or participant. Unless otherwise ordered by the Commission, the investigation or examination is non-public and the reports thereon are for staff and Commission use only.

* * * * *

This section is amended pursuant to the authority of the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq., and, in particular, sections 21(a), 15 U.S.C. 78u(a), and 23(a)(1), 15 U.S.C. 78w(a)(1).

By the Commission.

George A. Fitzsimmons,

Secretary.

September 21, 1981.

[FR Doc. 81-28225 Filed 9-28-81; 8:45 am]

BILLING CODE 8010-01-m

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 79C-0400]

Listing of Color Additives Exempt From Certification; Grape Color Extract

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of grape color extract as a color additive for nonbeverage food use. This action responds to a color additive petition filed by Welch Foods, Inc.

DATES: Effective October 30, 1981; objections by October 29, 1981.

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

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 4, 1979 (44 FR 69731), FDA announced that a color additive petition (CAP 9C0124) had been filed by Welch Food, Inc., Westfield, NY 14787, proposing to amend the color additive regulations to provide for the safe use of grape color extract as a color additive for food and drugs. Since that time, the petitioner has amended its petition to request that grape color extract be permitted for use as a color additive in nonbeverage foods only, under Part 73 (21 CFR Part 73) of the color additive regulations.

FDA has evaluated data in the petition and other relevant information and concludes that the proposed use is safe, and that Part 73 should be amended as set forth below to include the safe use of grape color extract as a color additive.

The agency previously considered the potential environmental effects of this rule as announced in the notice of filing published in the **Federal Register.** No new information or comment has been received that would alter the agency's previous determination that there is no significant impact on the human environment, and that an environmental impact statement is not required.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376)) 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 73 is amended in Subpart A by adding § 73.169 to read as follows:

§ 73.169 Grape color extract.

(a) *Identity.* (1) The color additive grape color extract is an aqueous solution of anthocyanin grape pigments made from Concord grapes or a dehydrated water soluble powder prepared from the aqueous solution. The aqueous solution is prepared by extracting the pigments from precipitated lees produced during the storage of Concord grape juice. It contains the common components of grape juice, namely anthocyanins, tartrates, malates, sugars, and minerals, etc., but not in the same proportion as found in grape juice. The dehydrated water soluble powder is prepared by spray drying the aqueous solution containing added malto-dextrin.

(2) Color additive mixtures for food use made with grape color extract may contain only those diluents listed in this subpart as safe and suitable in color additive mixtures for coloring foods.

(b) *Specifications.* Grape color extract shall conform to the following specifications: Pesticide residues, not more than permitted in or on grapes by regulations promulgated under section 408 of the Federal Food, Drug, and Cosmetic Act. Lead (as Pb), not more than 10 parts per million. Arsenic (as As), not more than 1 part per million.

(c) *Uses and restrictions.* Grape color extract may be safely used for the coloring of nonbeverage food, except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act, unless the use of added color is authorized by such standards.

(d) *Labeling.* The color additive and any mixtures prepared therefrom

intended solely or in part for coloring purposes shall bear, in addition to the other information required by the act, labeling in accordance with the provisions of § 70.25 of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches are exempt from the certification requirements of section 706(c) of the act.

Any person who will be adversely affected by the foregoing regulation may at any time on or before October 29, 1981 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provision of the regulation to which objection is made and shall state the grounds for the objection. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. If a hearing is requested, the objections shall state the issues for the hearing and shall be supported by grounds factually and legally sufficient to justify the relief sought. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation becomes effective October 30, 1981, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be given by publication in the **Federal Register**.

(Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376))

Dated: September 22, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-28157 Filed 9-28-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Green No. 6; Postponement of Closing Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Green No. 6 for use as a color additive in externally applied drugs and cosmetics. The new closing date will be December 1, 1981. This brief postponement will provide time for determining the applicability of the statutory standard for the listing of color additives to the results of scientific investigations of D&C Green No. 6.

EFFECTIVE DATE: Effective September 29, 1981, the new closing date for D&C Green No. 6 will be December 1, 1981.

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

SUPPLEMENTARY INFORMATION: The current closing date of September 29, 1981 for the provisional listing of D&C Green No. 6 was established by a regulation published in the **Federal Register** of July 28, 1981 (46 FR 38502). This closing date for D&C Green No. 6 was established to provide time for completion of FDA's review and evaluation of the data concerning the external uses of D&C Green No. 6 and for publication of a regulation in the **Federal Register** regarding the final decision on the petition for the permanent listing of this color additive. The regulation set forth below will postpone the September 29, 1981 closing date for the provisional listing of the color additive until December 1, 1981.

The review and evaluation of the data relevant to the use of D&C Green No. 6 in externally applied drugs and cosmetics and the decision about how to apply the statutory standard for the listing of color additives to such data have required more time than initially anticipated. FDA concludes that the brief extension of the closing date to December 1, 1981 is necessary. The agency has also concluded that no harm to the public health will result from this extension.

Because of the shortness of time until the September 29, 1981 closing date, FDA concludes that notice and public procedure on this regulation are impracticable, and that good cause exists for issuing this postponement as a final rule.

This regulation will permit the uninterrupted use of the color additive until further action is taken. In accordance with 5 U.S.C. 553(b) and (d) (1) and (3), this postponement is issued as a final regulation and is being made effective on September 29, 1981.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

§ 81.1 [Amended]

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) 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 81 is amended in § 81.1 *Provisional lists of color additives*, by revising the closing date for "D&C Green No. 6" in paragraph (b) to read "December 1, 1981."

Effective date. This regulation is effective September 29, 1981.

(Sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))

Dated: September 21, 1981.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-28241 Filed 9-28-81; 8:45 am]

BILLING CODE 4110-03-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 9H5207/R82; PH-FRL-1941-7]

Tolerances for Pesticides in Food Administered by Environmental Protection Agency; Ethephon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a food additive regulation permitting the residues of the plant regulator ethephon [(2-chloroethyl)phosphonic acid] in or on the processed commodity raisins at 12.0 parts per million (ppm). This regulation was requested by Union Carbide Agricultural Products Company. This regulation establishes the maximum permissible level for residues of the plant regulator in or on raisins.

EFFECTIVE DATE: Effective on September 29, 1981.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. 3708 (A–110), 401 M. St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 412E, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7066).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of April 13, 1979 (44 FR 22175) that Amchem Products, Inc. (now Union Carbide Agricultural Products Company), Ambler, PA 19002, had submitted a food additive petition (FAP 9H5207) to the EPA. The petition proposed that a regulation be established permitting residues of the plant regulator ethephon [(2-chloroethyl)phosphonic acid] in or on the processed commodities grape juice at 8.0 ppm; dried grape pomace at 10.0 ppm; and raisins at 12.0 ppm.

The petitioner subsequently amended the petition by submitting a revised Section F withdrawing the requests for regulations for grape juice and dried grape pomace.

No comments or requests for referral to an advisory committee were received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. For detailed toxicology information see PP 9F2178/R350 which appears elsewhere in this issue of the **Federal Register**. A related document (FAP 9H5207/R83) establishing a regulation permitting ethephon in raisin waste also appears elsewhere in this issue.

The pesticide is considered useful for the purpose for which the regulation is sought, and it is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136(a) *et seq.*).

Any person adversely affected by this regulation may, on or before October 29, 1981, file written objections with the Hearing Clerk, EPA, Rm. M–3708 (A–110), 401 M St., SW., Washington, D.C. 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food and feed additive levels or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

Effective on: September 29, 1981.

(Sec. 409(c)(1), 72 Stat. 1786; (21 U.S.C. 348a(c)(1)))

Dated: September 17, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

PART 193—TOLERANCES FOR PESTICIDES IN FOOD ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR 193.186 is amended by adding paragraph (d) to read as follows:

§ 193.186 Ethephon.

* * * * *

(d) A regulation permitting residues of the plant growth regulator ethephon [(2-chloroethyl)phosphonic acid] at 12.0 parts per million is established for raisins when the plant growth regulator is present as a result of application to the growing raw agricultural commodity grapes.

[FR Doc. 81–28202 Filed 9–28–81; 8:45 am]

BILLING CODE 6560–32–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Nitarsone

AGENCY: Food and Drug Administration.

ACTION: Final rule

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Salsbury Laboratories providing revised labeling for safe and effective use of nitarsone premixes to manufacture complete chicken and turkey feeds used as an aid in the prevention of blackhead. The revised labeling concurs with the conclusions of the National Academy of Sciences/National Research Council (NAS/NRC) evaluation of the product.

EFFECTIVE DATE: September 29, 1981.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Bureau of Veterinary Medicine (HFV–149), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: Salsbury Laboratories, Charles City, IA 50616, filed a supplemental NADA (7–616) providing for use of 50 percent nitarsone premixes for making complete feeds containing 0.01875 percent nitarsone used as an aid in the prevention of blackhead in chickens and turkeys. The application initially became effective December 8, 1950. It was the subject of a National Academy of Sciences/National Research Council (NAS/NRC) notice published in the **Federal Register** of April 15, 1969 (34 FR 6494). The notice contained the conclusion that the product when used at a dosage of 0.025 percent is effective as an aid in the prevention of blackhead in chickens and turkeys, but that there is at the same dosage a toxic reaction (leg weakness). Accordingly, NAS/NRC suggested that a reduced dosage be used and recommended that the label bear a statement cautioning that adequate drinking water must be available near the feeder at all times. FDA concurred with the conclusions in the NAS/NRC notice and further concluded that the product is effective at 0.01875 percent for the stated claims. Sponsors were invited to file supplemental NADA's providing revised labeling indicating (1) that the drug is to be used as an aid in the prevention of blackhead in chickens and turkeys in complete rations containing 0.01875 percent of the drug; (2) that early medication is essential to prevent spread of disease; (3) that adequate drinking water must be provided near the feeder at all times; (4) that the drug is not effective in preventing blackhead in birds infected more than 4 or 5 days; (5) that equipment used for mixing the drug with feed must be thoroughly cleaned before using to mix other feeds; (6) that use of the drug is to be discontinued 5 days before slaughtering treated animals for food for human consumption; (7) that the drug is dangerous for ducks, geese, and

dogs; (8) that an overdosage or a lack of water may result in leg weakness in or paralysis of the treated animal; (9) that the drug must be kept out of the reach of children; and (10) that the drug may be used as a sole source of arsenic.

Salsbury Laboratories submitted a supplemental NADA providing revised labeling which concurred with the conclusions of the NAS/NRC review and FDA. The supplement is approved and the regulations are amended accordingly.

Nitarsone is currently approved for use at 0.025 percent in chickens and turkeys as an aid in the prevention of blackhead. This supplement provides for use of the drug for the same species at a lower dosage in accordance with the conclusions of the NAS/NRC notice. Approval of this supplement should not result in a significant increase in the number of food-producing animals receiving the medication. The Bureau of Veterinary Medicine concludes that approval of this supplemental NADA poses no increased human risk from exposure to residues of the new animal drug. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this is a category II supplemental approval which does not require reevaluation of the human safety data supporting the parent 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.

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.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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 by adding new § 558.369 to read as follows:

§ 558.369 Nitarsone.

(a) *Approvals.* Premix levels of 50 percent to No. 017210 in § 510.600(c) of this chapter.

(b) *Assay limits.* Finished feed 85 to 120 percent of labeled amount.

(c) *Special considerations.* Finished feed containing nitarsone only and conforming to the requirements of this section are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

(d) *Related tolerances.* See § 556.60 of this chapter.

(e) *NAS/NRC status.* These conditions of use are NAS/NRC reviewed and found effective. NADA's for these uses may not require effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

(f) *Conditions of use.* It is used in the complete feed for chickens and turkeys as follows:

(1) *Amount.* Nitarsone, 0.01875 percent.

(2) *Indications for use.* As an aid in the prevention of blackhead.

(3) *Limitations.* Early medication is essential to prevent spread of disease. Adequate drinking water must be provided near feeder at all times. The drug is not effective in preventing blackhead in birds infected more than 4 or 5 days. Equipment used for mixing this drug with feed must be thoroughly cleaned before using to mix other feeds. Discontinue use 5 days before slaughtering animals for human consumption to allow elimination of the drug from edible tissues. The drug is dangerous for ducks, geese, and dogs. Overdoseage or lack of water may result in leg weakness or paralysis. Use as sole source of arsenic.

Effective date. This regulation is effective September 29, 1981.

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

Dated: September 23, 1981.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 81-28158 Filed 9-28-81; 8:45 am]

BILLING CODE 4110-03-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 9H5207/R83; PH-FRL-1941-8]

Tolerances for Pesticides in Animal Feeds Administered by Environmental Protection Agency; Ethephon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation permitting the residues of the plant regulator ethephon [(2-chloroethyl)phosphonic acid] in or on the animal feed raisin waste at 65.0 parts per million (ppm). This regulation was requested by Union Carbide Agricultural Products Company. This regulation establishes the maximum permissible level for residues of the plant regulator in or on raisin waste.

EFFECTIVE DATE: Effective on September 29, 1981.

ADDRESS: Written objections may be submitted to the Hearing Clerk, Environmental Protection Agency, Rm. 3708 (A-110), 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Program, Environmental Protection Agency, Rm. 412E, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7066).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of April 13, 1979 (44 FR 22175) that Amchem Products, Inc. (now Union Carbide Agricultural Products Company), Ambler, PA 19002, had submitted a feed additive petition (FAP 9H5207) to the EPA. The petition proposed that a regulation be established permitting residues of the plant regulator ethephon [(2-chloroethyl)phosphonic acid] in or on the animal feed raisin waste at 65.0 parts per million (ppm).

No comments or requests for referral to an advisory committee were received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. For detailed toxicology information see PP 9F2178/R350 which appears elsewhere in this issue of the **Federal Register**. A related document (FAP 9H5207/R82) establishing a regulation permitting ethephon in raisins also appears elsewhere in this issue.

The pesticide is considered useful for the purpose for which the regulation is sought, and it is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136(a) *et seq.*).

Any person adversely affected by this regulation may, on or before October 29, 1981, file written objections with the Hearing Clerk, EPA, Rm. M-3708 (A-110), 401 M St., SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the

hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food and feed additive levels or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

Effective on: September 29, 1981.

(Sec. 409(c)(1), 72 Stat. 1786; (21 U.S.C. 348a(c)(1)).

Dated: September 17, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR Part 561 is amended by adding a new § 561.255 to read as follows:

§ 561.255 Ethephon.

A regulation is established permitting residues of the plant growth regulator ethephon [(2-chloroethyl) phosphonic acid] in raisin waste at 65.0 parts per million when it is present as a result of application of the plant growth regulator to the growing agricultural commodity grapes.

[FR Doc. 81-28203 Filed 9-28-81; 8:45 am]

BILLING CODE 6560-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 120

Land Records and Title Documents

September 10, 1981.

AGENCY: Bureau of Indian Affairs.

ACTION: Final rule.

SUMMARY: These are new rules revising and replacing regulations relating to land records and title documents affecting Indian lands. They cite the statutory authorities and define the role of the Land Titles and Records Offices (formerly called title plants) in the Bureau of Indian Affairs as the offices of record for all title documents to Indian lands. The regulations set forth the policies and procedures to be followed by owners and administrators of Indian lands, employees of the Bureau of Indian Affairs, and other persons authorized by law or regulation to have access to information about the current status and ownership of Indian lands.

EFFECTIVE DATE: October 29, 1981.

FOR FURTHER INFORMATION CONTACT: Elva DeCelles, Land Records Officer, Bureau of Indian Affairs, 500 Gold Avenue, P.O. Box 888, Albuquerque, New Mexico 87103. Telephone numbers: (503-766-2800) (FTS 8-474-2800).

SUPPLEMENTARY INFORMATION: Proposed regulations were published in the **Federal Register**, Volume 45, No. 207 at 70284 on October 23, 1980. Several written comments were received during the 30-day comment period. The general areas of comment, some of the major suggestions, and the changes which have been made are discussed below. Several minor editorial changes are not mentioned.

The language of the proposed § 120.2(h), which defines "Indian land", has been changed to include lands which are subject to the rights of use, occupancy and/or benefit of certain tribes. This language has been added so as to include those lands set aside, reserved or purchased for tribes by the United States where such rights exist but where no express trust language appears in the title document.

The language for that portion of the proposed § 120.2(m) which cites the purpose for "recordation" or "recording" has been changed so as to add constructive notice of the ownership and change of ownership and the existence of encumbrances to the land. The legislative history of the Act of July 26, 1892 (27 Stat. 272; 25 U.S.C. 5), which appears in House Executive Document No. 73 (52nd Congress, 1st Session) and in the Congressional Record of March 21, 1892, at 2254, implies with certainty that the recordation of Indian title documents in the Office of the Commissioner of Indian Affairs would give constructive notice of such conveyance documents provided the documents were recorded after enactment of the then proposed legislation.

Because title documents affect vested property rights, actions to cure defects should not generally be initiated by the Land Titles and Records Office. Therefore, proposed § 120.7(a) has been changed to require only that, with the exception of probate records, the Land Titles and Records Office shall notify the originating office of defects appearing in title documents.

The language of proposed § 120.8 has been changed by deleting the requirements that requests for title status reports be on a prescribed form and that such requests identify the lands by legal description. It is felt that these requirements were burdensome and, in the case of legal descriptions, not always necessary to the clear identification of the land in question.

To avoid the possibility of being misleading, the words "equally with" in proposed § 120.10 have been changed to read "the same as."

Several comments were directed to proposed § 120.11(a) where it addresses policy grounds for denying access to land records and title documents where such access is not required by the Freedom of Information Act, 5 U.S.C. 552. This language was employed because the Bureau of Indian Affairs, in meeting its fiduciary responsibility to Indian tribes, is particularly sensitive to the public disclosure of income derived from tribal leases. For this reason, we have added to § 120.11(a) that it shall be the policy of the Bureau of Indian Affairs that, unless specifically authorized, monetary considerations will not be disclosed insofar as leases of tribal land are concerned.

Special problems exist in applying the regulations of this part in their entirety to the Juneau Area Office and the Cherokee Agency (North Carolina). In both cases, title services have been performed at the agency level. Agency realty specialists perform essentially the same services (including title status reports) performed at title plants. In Alaska, documents are kept at the agency and recorded in the State recording system. It was not thought advisable to apply every single portion of the regulations to the Juneau Area Office or Cherokee Agency at this time. Rather, the regulations permit the continuance of the slight differences in practice in those two offices without inhibiting developments which would bring them more in line with the officially designated Land Titles and Records Offices in the future. For example, neither the Juneau Area Office nor the Cherokee Agency has been designated as a certifying office for

purposes of § 120.10. However, either may be so designated in the future.

The primary authors of this document have been Elva DeCelles, Land Records Officer, Bureau of Indian Affairs, 500 Gold Avenue, P.O. Box 888, Albuquerque, New Mexico 87103, (503–766–2800) (FTS 8–474–2800), and Howard Piepenbrink, Realty Specialist, Bureau of Indian Affairs, 1951 Constitution Avenue, N.W., Washington, D.C. 20245, Code 226, (202–343–5473) (FTS 8–343–5473).

The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic impact on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act. Although this rule sets forth procedures for the recordation of Indian land conveyances and title documents in order to provide constructive notice, such documents are drafted and executed pursuant to other existing regulations. The rule, therefore, does not impose new information collection or recordkeeping requirements on individuals, businesses, organizations, or state and local governments.

(5 U.S.C. 301; 25 U.S.C. 1 and 2; 25 U.S.C. 5 and 9; 209 DM 8)

Part 120 of Title 25 of the Code of Federal Regulations is revised to read as follows:

PART 120—LAND RECORDS AND TITLE DOCUMENTS

Sec.

120.1 Purpose and scope.
120.2 Definitions.
120.3 Maintenance of land records and title documents.
120.4 Location and service areas for land titles and records offices.
120.5 Other Bureau offices with title service responsibility.
120.6 Recordation of title documents.
120.7 Curative action to correct title defects.
120.8 Title status reports.
120.9 Land status maps.
120.10 Certification of land records and title documents.
120.11 Disclosure of land records, title documents, and title reports.

Authority: Act of June 30, 1834 (4 Stat. 738; 25 U.S.C. 9). Act of July 26, 1892 (27 Stat. 272; 25 U.S.C. 5). Reorganization Plan No. 3 of 1950 approved June 20, 1949 (64 Stat. 1262). (Act of April 26, 1906 (34 Stat. 137); Act of May 27, 1908 (35 Stat. 312); Act of August 1, 1914 (38 Stat. 582, 598) deal specifically with land records of the Five Civilized Tribes.)

Cross-References: For further regulations pertaining to proceedings in Indian probate, see 43 CFR Part 4, Subpart D.

§ 120.1 Purpose and scope.

These regulations set forth authorities, policy and procedures governing the recording, custody, maintenance, use and certification of title documents, and the issuance of title status reports for Indian land.

§ 120.2 Definitions.

As used in this part.

(a) "Secretary" is the Secretary of the Interior or his authorized representative.

(b) "Commissioner" is the Commissioner of Indian Affairs or his authorized representative.

(c) "Agency" is an Indian Agency or other field unit of the Bureau of Indian Affairs having Indian land under its immediate jurisdiction.

(d) "Superintendent" is the designated officer in charge of an Agency.

(e) "Tribe" is a tribe, band, nation, community, rancheria, colony, pueblo, or other Federally-acknowledged group of Indians.

(f) "Bureau" is the Bureau of Indian Affairs.

(g) "Land" is real property, including any interests, benefits, and rights inherent in the ownership of the real property.

(h) "Indian land" is an inclusive term describing all lands held in trust by the United States for individual Indians or tribes, or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance, or all lands which are subject to the rights of use, occupancy and/or benefit of certain tribes. For purposes of this Part, the term Indian land also includes land for which the title is held in fee status by Indian tribes, and U.S. Government-owned land under Bureau jurisdiction.

(i) "Administrative Law Judge" is an employee of the Office of Hearing and Appeals, Department of the Interior, upon whom authority has been conferred by the Secretary to probate the trust or restricted estates of deceased Indians in accordance with 43 CFR, Part 4, Subpart D.

(j) "Land Titles and Records Offices" are those offices within the Bureau of Indian Affairs charged with the Federal responsibility to record, provide custody, and maintain records that affect titles to Indian lands, to examine titles, and to provide title status reports for such land.

(k) "Manager" is the designated officer in charge of a Land Titles and Records Office.

(l) "Title document" is any document that affects the title to or encumbers Indian land and is required to be recorded by regulation or Bureau policy.

(m) "Recordation" or "recording" is the acceptance of a title document by the appropriate Land Titles and Records Office. The purpose of recording is to provide evidence of a transaction, event, or happening that affects land titles; to preserve a record of the title document; and to give constructive notice of the ownership and change of ownership and the existence of encumbrances to the land.

(n) "Title examination" means an examination and evaluation by a qualified title examiner of the completeness and accuracy of title documents affecting a particular tract of Indian land with certification of the findings by the Manager of the Land Titles and Records Office.

(o) "Title status report" means a report issued after a title examination which shows the proper legal description of a tract of Indian land; current ownership, including any applicable conditions, exceptions, restrictions or encumbrances on record; and whether the land is in unrestricted, restricted, trust, or other status as indicated by the records in a Land Titles and Records Office.

§ 120.3 Maintenance of land records and title documents.

The Land Titles and Records Offices within the Bureau are hereby designated as the offices of record for land records and title documents and are hereby charged with the Federal responsibility to record, provide custody, and maintain records that affect titles to Indian land, to examine titles, and to provide title status reports.

§ 120.4 Locations and service areas for land titles and records offices.

Shown below are present Land Titles and Records Offices and the jurisdictional area served by each office.

(a) Aberdeen, S. Dakota Office provides title service for Indian land located under the jurisdiction of the Aberdeen and Minneapolis Area Offices, except for Indian land on the White Earth, Isabella, and Oneida Indian Reservations.

(b) Albuquerque, New Mexico Office provides title services for Indian land located under the jurisdiction of the Albuquerque, Navajo, and Phoenix Area Offices.

(c) Anadarko, Oklahoma Office provides title services for Indian land located under the jurisdiction of the Anadarko Area Office and under the Miami Agency of the Muskogee Area Office.

(d) Billings, Montana Office provides title services for Indian land located

under the jurisdiction of the Billings Area Office.

(e) Portland, Oregon Office provides title services for Indian land located under the jurisdiction of the Portland and Sacramento Area Offices.

§ 120.5 Other Bureau offices with title service responsibility.

(a) Muskogee Area Office is the office of record and performs limited title functions for all Indian land of the Five Civilized Tribes. The regulations in this part apply to the Muskogee Area Office to the extent that they relate to the title services performed by that office.

(b) The Juneau Area Office has title service responsibility for the Juneau Area. This authority has been largely delegated to the agencies. The regulations in this part apply to the Juneau Area Office to the extent practicable.

(c) The Cherokee Agency has title service responsibility for the Eastern Cherokee Reservation. The regulations in this part apply to the Cherokee Agency to the extent practicable.

(d) The Bureau Central Office, Washington, D.C., provides title services for all other Indian land not shown above in § 120.4 or in this section, including the land of the Absentee Wyandottes. The regulations in this part apply to the Central Office.

§ 120.6 Recordation of title documents.

All title documents shall be submitted to the appropriate Land Titles and Records Office for recording immediately after final approval, issuance, or acceptance. Bureau officials delegated authority by the Secretary to approve title documents or accept title are responsible for prompt compliance with the recording requirement. Documents submitted for recording shall be completed in accordance with prescribed Bureau regulations or instructions.

(a) *Title documents other than probate records.* The original, a signed duplicate, or a certified copy of such documents shall be submitted for recording. Following the recording process, the Land Titles and Records Office will return those title documents that are required to be returned to the originating office with appropriate recording information.

(b) *Probate records.* In accordance with 43 CFR Part 4, Subpart D, Administrative Law Judges shall forward the original record of Indian probate decisions and copies of petitions for rehearing, reopening, and other appeals to the Land Titles and Records Office which provides service to the originating Agency. If trust land or Indian heirs involved in the probate are located within the jurisdictional area of another Land Titles and Records Office, the Administrative Law Judge shall also send a duplicate copy to that office. Probate records submitted by an Administrative Law Judge for recording will be retained by the Land Titles and Records Office.

§ 120.7 Curative action to correct title defects.

Land Titles and Records Office shall initiate such action as described below to cure defects in the record discovered during the recording of title documents or examination of titles.

(a) If an error is traced to a defective title document other than probate records, the Land Titles and Records Office shall notify the originating office of the defect.

(b) If errors are discovered in probate records, the Land Titles and Records Office may initiate corrective action as follows:

(1) An administrative modification shall be issued to modify probate records to include any Indian land omitted from the inventory if such property is located in the same state and takes the same line of descent as that shown in the original probate decision. Authority is delegated to the Commissioner by 43 CFR 4.272 to make such modifications except on those Indian reservations covered by special Inheritance Acts (43 CFR 4.300). Copies of administrative modifications shall be distributed to the appropriate Administrative Law Judge, Agencies with jurisdiction over the Indian land, and to all persons who share in the estate.

(2) Land Titles and Records Offices shall notify the Superintendent when modifications are required by Administrative Law Judges for other types of probate errors. Corrective action is then initiated in accordance with 43 CFR Part 4, Subpart D.

(3) Land Titles and Records Offices shall issue administrative corrections to correct probate errors which are clerical in nature and which do not affect vested property rights or involve questions of due process. Copies of administrative corrections are distributed to the appropriate Administrative Law Judge and Agency.

§ 120.8 Title status reports.

Land Titles and Records Offices may conduct a title examination of a tract of Indian land provide a title status report upon request to those persons authorized by law to receive such information. Requests for title status reports shall be submitted by or through the Bureau office that has administrative jurisdiction over the Indian land. All requests must clearly identify the tract of Indian land.

§ 120.9 Land status maps.

The Land Titles and Records Offices shall prepare and maintain maps of all reservations and similar entities within their jurisdictions to assist Bureau personnel in the execution of their title service responsibilities.

Base maps shall be prepared from plats of official survey made by the General Land Office and the Bureau of Land Management. These base maps, showing prominent physical features and section, township and range lines, shall be used to prepare land status maps. The land status maps shall reflect the individual tracts, tract numbers, and current status of the tract. Other special maps, such as plats and townsite maps, may also be prepared and maintained to meet the needs of individual Land Titles and Records Offices, Agencies, and Indian tribes.

§ 120.10 Certification of land records and title documents.

Under the provisions of the Act of July 26, 1892 (27 Stat. 273; 25 U.S.C. 6), an offical seal was created for the use of the Commissioner of Indian Affairs in authenticating and certifying copies of Bureau records. Managers of Land Titles and Records Offices are designated as Certifying Officers for this purpose. When a copy or reproduction of a title document is authenticated by the official seal and certified by a Manager, Land Titles and Records Office, the copy or reproduction shall be admitted into evidence the same as the original from which it was made. The fees for furnishing such certified copies are established by a uniform fee schedule applicable to all constituent units of the Department of the Interior and published in 43 CFR Part 2, Appendix A.

§ 120.11 Disclosure of land records, title documents, and title reports.

(a) The usefulness of a Land Titles and Records Office depends in large measure on the ability of the public to consult the records contained therein. It is therefore, the policy of the Bureau of Indian Affairs to allow access to land records and title documents unless such access would violate the Privacy Act, 5 U.S.C. 552a or other law restricting access to such records, or there are strong policy grounds for denying access where such access is not required by the Freedom of Information Act, 5 U.S.C. 552. It shall be the policy of the Bureau of Indian Affairs that, unless specifically authorized, monetary considerations

will not be disclosed insofar as leases of tribal land are concerned.

(b) Before disclosing information concerning any living individual, the Manager, Land Titles and Records Office, shall consult 5 U.S.C. 552a(b) and the notice of routine users then in effect to determine whether the information may be released without the written consent of the person to whom it pertains.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 81-28165 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8-R]

Implementation of Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Amendment No. 8

AGENCY: Office of the Secretary of Defense.

ACTION: Amendment No. 8 to final rule.

SUMMARY: This amends DoD Regulation 6010.8-R (32 CFR 199) which implements the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). This amendment is necessary to implement language contained in the DoD Appropriation Act, 1981. This amendment will allow benefit consideration for one wig/hairpiece (lifetime maximum) when hair loss has resulted from treatment of a malignant disease, provided the individual has not previously received a wig/hairpiece from the Government.

EFFECTIVE DATE: This amendment is retroactively effective to wigs/hairpieces provided on or after December 15, 1980.

FOR FURTHER INFORMATION CONTACT: Thomas J. Osoba, Chief, Program Policy Branch, OCHAMPUS, telephone (303) 341-8608.

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 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)," as Part 199 of this title.

The Department of Defense Appropriation Act, 1981 (Pub. L. 96-527, Section 744) authorizes CHAMPUS coverage during Fiscal Year 1981 of one wig/hairpiece (lifetime maximum) if an individual has alopecia that resulted from treatment of a malignant disease. The intent of this legislation is to lessen the emotionally devastating impact a beneficiary experiences when hair loss occurs as a result of treatment of malignant disease by providing financial assistance in the purchase of a wig/hairpiece. Most methods of treatment of malignant diseases may result in hair loss, which is especially disturbing to female patients. Wearing a wig/hairpiece can improve the morale of those who have suffered hair loss in this way and does not interfere with hair regrowth.

Currently, Section 199.10(g)(45) of this Part specifically prohibits the payment of CHAMPUS benefits for wigs and hairpieces. This amendment to the rule is necessary in order to provide an exception to the exclusion as of December 15, 1980; therefore, an explanatory note will be added to section 199.10(g)(45). Extension of the benefit beyond Fiscal Year 1981 will depend upon language of the annual Department of Defense Appropriation Act.

As authorized under title 5, United States Code section 553(b)(B), the final regulation is being published and no previous public comment has been requested. It was determined that the benefit has been expanded through Congressional legislation in December 1980, and it is not in the public interest to delay the implementation through the publication of a proposed rule.

Acordingly, 32 CFR, Chapter I, is amended reading as follows:

PART 198—TECHNICAL MANUAL (TM) MANAGEMENT

1. In § 199.10, paragraph [g][45] is revised to read as follows:

199.10 Basic program benefits.

* * * * *

(g) *Exclusions and limitations.* * * *

(45) Hair transplants; Wigs or hairpieces.

Note.—In accordance with the Department of Defense Appropriation Act, 1981 (Pub. L. 96-527, Section 744), CHAMPUS coverage for wigs/hairpieces is permitted effective December 15, 1980 under the conditions listed below. Availability of benefits beyond Fiscal Year 1981 will depend on the language of the annual Department of Defense Appropriation Act.

(i) *Benefits provided.* Benefits may be extended, in accordance with the CHAMPUS-determined allowable charge, for one wig/hairpiece per beneficiary (lifetime maximum) when the attending physician certifies that alopecia has resulted from treatment of a malignant disease and the beneficiary certifies that a wig/hairpiece has not previously been obtained through the United States Government (including the Veterans' Administration).

(ii) *Exclusions.* The wig/hairpiece benefit does not include coverage for the following:

(A) Alopecia resulting from conditions other than treatment of malignant disease.

(B) Maintenance, wig/hairpiece supplies, or replacement of the wig/hairpiece.

(C) Hair transplants or any other surgical procedure involving the attachment of hair or a wig/hairpiece to the scalp.

(D) Any diagnostic or therapeutic method or supply intended to encourage hair regrowth.

* * * * *

(10 U.S.C. 1086, 5 U.S.C. 301)

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

September 23, 1981.

[FR Doc. 81-28090 Filed 9-28-81; 8:45 am]

BILLING CODE 3810-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Changes in Veterans' Disability Compensation and Survivors Benefits

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration has amended its adjudication regulations to implement a new law, the Veteran's Disability Compensation and Housing Benefits Amendments of 1980. This law (1) increases the rates of disability compensation and the rates of dependency and indemnity compensation (DIC) payable to surviving spouses and children, (2) amends the rules on reduction of pension due to hospitalization, (3) eliminates waiver of retired pay in improved pension cases, (4) authorizes a new limited specially adapted housing grant, (5) provides that compensation and DIC shall be substantially reduced if the payee is incarcerated as a result of conviction of a felony, and (6) directs that a total compensation rating based on unemployability may not be assigned to an incarcerated veteran.

EFFECTIVE DATES: Except for reduction of compensation and DIC due to

incarceration, these changes are effective October 1, 1980, (or for months beginning after September 30, 1980) the date specified in the new law designated as Pub. L. 96–385. The effective date of the incarceration regulation is October 7, 1980.

FOR FURTHER INFORMATION CONTACT:
T. H. Spindle (202–389–3005).

SUPPLEMENTARY INFORMATION: On pages 12987–91 of the Federal Register of February 19, 1981 the Veterans Administration published proposed regulations to implement Pub. L. 96–385. Interested persons were given until March 31, 1981 to submit comments, objections, or suggestions to the proposed regulations. One comment, signed by two persons, was received.

The commentators object to the proposed 38 CFR 3.665, which provides rules for reduction of disability compensation payable to the veteran incarcerated in a penal institution for conviction of a felony, on basically three grounds. First, they contend that Pub. L. 96–385 is unconstitutional and, therefore, § 3.665 is invalid. Second, they are "concerned that notice to persons whose benefits are subject to reduction is inadequate." Third, they "object to the creation of what appears to be a 'needs-based' apportionment requirement for dependents that is not authorized by law."

As to the concern that a portion of the new law is unconstitutional, we respond that clearly it is not patently so. While the courts are the proper forum for final resolution of any such challenges, we are sufficiently comfortable with the judgment of Congress in this regard to proceed with execution of the law as enacted.

The commentators object to § 3.665(a) because they say that it fails to provide for notification to the incarcerated person that benefits will be reduced beginning on the 61st day of incarceration. It is not necessary to include this in § 3.665(a) because 38 CFR 3.103(e) provides that a claimant (the term "claimant" includes a beneficiary) will be notified of any decision affecting payment of benefits. The notice will include the reason for the decision affecting payment of benefits, the effective date of the decision, and will inform the claimant of hearing and appellate rights. Furthermore, we are requesting Federal and State prison officials to immediately notify us whenever a person in receipt of compensation is incarcerated for a felony. We are hopeful that this will permit us to send the reduction notice to the incarcerated person well in advance of the date of reduction for incarceration which is the 61st day of imprisonment.

The need for a prereduction notice and hearing has been carefully considered. We have determined that in balancing the respective interests involved, the government's interest in proceeding without such notice and hearing outweighs that of the individual since the individual's needs will be met by the institution wherein the individual is incarcerated and by the authorized reduced amount of compensation payable by the Veterans Administration.

Section 3.655(a) specifies that a person whose benefits have been reduced because of incarceration shall be informed of the right of the person's dependents to an apportionment while the beneficiary remains incarcerated. This section further states that the beneficiary's dependents shall also be informed of this right if the Veterans Administration is aware of their existence and can obtain their addresses.

The commentators wish us to set out in the regulation exactly how we will locate dependents when the file does not reflect their whereabouts and the incarcerated person refuses to cooperate. This we are unable to do since our actions would depend on the facts in the individual case.

The commentators object to the provision of § 3.665(e) which authorizes an apportionment of an incarcerated person's compensation on the basis of individual need. They do not believe that Pub. L. 96–385 imposes a needs requirement and contend that all of the compensation withheld during incarceration should be paid to dependents solely on the basis of the dependents' relationship to the incarcerated person. We do not agree with this contention.

Under section 504(a), Pub. L. 96–385 apportionments to dependents of incarcerated veterans are to be made under the same rules as are applicable to apportionments under 38 U.S.C. 3107. The provision of section 3107 that is relevant to the matter at hand states "All or any part of the compensation, * * * payable on account of any veteran may * * * if the veteran is not living with his wife, or if his children are not in his custody, be apportioned *as may be prescribed by the Administrator.*" (Emphasis supplied.) The statute clearly permits the Veterans Administration to prescribe the rules under which an apportionment may be granted.

Historically apportionments have been granted based on the dependent's need for support and the ability of the veteran to pay. A dependent does not have a statutory right of entitlement to the additional compensation payable by reason of the dependent's existence. The total amount payable belongs to the veteran.

The apportionment rules of 38 CFR 3.665(e) are authorized under 38 U.S.C. 3107 and are consistent with the manner in which apportionment decisions have been made under section 3107 prior to the enactment of Pub. L. 96–385. It should also be pointed out that the intent of Congress would be defeated in many cases if we were to adopt the commentators' contention that all of withheld compensation should be apportioned for the veteran's dependents merely on the basis of relationship.

The commentators also argue that if the needs requirement is adopted the requirements for determining individual need should be more specific. They would, for example, like us to state "the income level that would serve as a basis for rejection or acceptance of an apportionee's claim." We are unable to comply with this request because the determination of need for an apportionment is based on the facts in the individual case. One claimant may have high living expenses and another low living expenses. One spouse may have many children and another none. Consequently, one claimant with considerable income may be in need while another with much less income is not in need. The present guidelines for determining need permit the flexibility we need for equitable adjudication of apportionment claims.

The commentators contend that any dependent of a survivor eligible for dependency and indemnity compensation (DIC) should be eligible for an apportionment if the eligible survivor is incarcerated. We disagree with this contention. Section 504(a) of Pub. L. 96–385 authorizes such an apportionment only for a veteran's surviving spouse or surviving child or children. There is no legal basis to apportion to any other person.

The commentators pointed out that the proposed § 3.665 does not include a definition of "felony" and we concur that it is desirable to incorporate one. We observe that not all States (New Jersey, e.g.) employ the "felony" classification. We have, therefore, adopted the widely employed standard embracing those offenses punishable by death or imprisonment for a term exceeding 1 year (*e.g.*, 18 U.S.C. 1). This we have tempered with a qualifier to assure that it does not include any offenses actually classified as misdemeanors.

We agree with the commentator's suggestion that the "date of request" language in § 3.665(f) is unclear. We have amended the regulation to indicate that the term "date of request" refers to a date of request by the Veterans' Administration for necessary evidence.

The commentators also felt that the language in § 3.665(i)(1) relating to resumption of benefits when there was an apportionment award was unclear. We agree and have amended § 3.665(i)(1) to provide for resumption of the amount apportioned effective the date of last payment to the apportionee.

We have as a result of our own review, added a new paragraph (designated as paragraph (m)) to § 3.665 to provide for repayment of benefits withheld if conviction is reversed on appeal.

The Administrator hereby certifies that these final rules will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this final rule is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations apply to benefits received by individual veterans and their dependents. They will have no significant impact on small entities in terms of compliance costs, recordkeeping requirements, or effects on competition.

The agency has determined that these regulations are nonmajor in accordance with Executive Order 12291, Federal Regulation. Any major economic impact would result from Pub. L. No. 96–385 and not from these regulations which simply conform to that law.

(Catalog of Federal Domestic Assistance Program numbers 64.104, 64.106 and 64.109)

Approved: September 9, 1981.

Robert P. Nimmo,

Administrator.

PART 3—ADJUDICATION

§ 3.340 [Amended]

1. Section 3.340 is amended by removing the words, "1945 Schedule for Rating Disabilities" and inserting the words "Schedule for Rating Disabilities" in paragraph (a)(2) and adding the words "or herself" after the word "himself" in the last sentence of paragraph (a)(3)(iii).

2. Section 3.341 is revised to read as follows:

§ 3.341 Total disability ratings for compensation purposes.

(a) *General.* Subject to the limitation in paragraph (b) of this section, total-disability compensation ratings may be assigned under the provisions of § 3.340. However, if the total rating is based on a disability or combination of disabilities for which the Schedule for Rating Disabilities provides an evaluation of less than 100 percent, it must be determined that the service-connected disabilities are sufficient to produce unemployability without regard to advancing age. 38 U.S.C. 355.

(b) *Incarcerated veterans.* A total rating for compensation purposes based on individual unemployability which would first become effective while a veteran is incarcerated in a Federal, State or local penal institution for conviction of a felony, shall not be assigned during such period of incarceration. However, where a rating for individual unemployability exists prior to incarceration for a felony, or prior to October 7, 1980 and routine review is required the case will be reconsidered to determine if continued eligibility for such rating exists. (38 U.S.C. 3113(c))

3. In § 3.342, paragraph (a) is revised to read as follows:

§ 3.342 Permanent and total disability ratings for pension purposes.

(a) *General.* Permanent total disability ratings for pension purposes are authorized for disabling conditions not the result of the veteran's own willful misconduct whether or not they are service connected. However, no rating is required in claims for pension if the veteran is 65 years of age or older. In such instances permanent and total disability will be presumed. (38 U.S.C. 502(a))

* * * * *

4. In § 3.350, the introductory portion of paragraph (a) preceding subparagraph (1) is revised to read as follows:

§ 3.350 Special monthly compensation ratings.

The rates of special monthly compensation stated in this section are those provided under 38 U.S.C. 314.

(a) *Ratings under 38 U.S.C. 314(k).* Special monthly compensation under 38 U.S.C. 314(k) is payable for each anatomical loss or loss of use of one hand, one foot, both buttocks, one or more creative organs, blindness of one eye having only light perception, deafness of both ears, having absence of air and bone conduction, or complete organic aphonia with constant inability to communicate by speech. This special compensation is payable in addition to the basic rate of compensation otherwise payable on the basis of degree of disability, provided that the combined rate of compensation does not exceed the monthly rate set forth in 38 U.S.C. 314(l) when authorized in conjunction with any of the provisions of 38 U.S.C. 314 (a) through (j) or (s). When there is entitlement under 38 U.S.C. 314 (l) through (n) or an intermediate rate under (p) such additional allowance is payable for each such anatomical loss or loss of use existing in addition to the requirements for the basic rates, provided the total does not exceed the monthly rate set forth in 38 U.S.C. 314(o). The limitations on the maximum compensation payable under this paragraph are independent of and do not preclude payment of additional compensation for dependents under 38 U.S.C. 315, or the special allowance for aid and attendance provided by 38 U.S.C. 314(r).

* * * * *

5. In § 3.551, paragraph (c)(3) is revised to read as follows:

§ 3.551 Reduction because of hospitalization.

* * * * *

(c) *Section 306 pension, improved pension, and service pension based on entitlement after June 30, 1960.* * * *

(3) No pension in excess of $60 monthly shall be paid to or for a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within 6 months of a period of care for which pension was reduced under paragraph (c) (1) or (2) of this section. (38 U.S.C. 3203(a))

* * * * *

6. In § 3.552, paragraph (g) is revised to read as follows:

§ 3.552 Adjustment of allowance for aid and attendance.

* * * * *

(g) Where a veteran entitled to one of the rates under 38 U.S.C. 314 (l), (m), or (n) by reason of anatomical losses or losses of use of extremities, blindness (visual acuity 5/200 or less or light perception only), or anatomical loss of both eyes is being paid compensation at the rate under 38 U.S.C. 314(o) because of entitlement to another rate under section 314(l) on account of need for aid and attendance, the compensation will be reduced while hospitalized to the following:

(1) If entitlement is under section 314(l) and in addition there is need for

regular aid and attendance for another disability, the award during hospitalization will be at the rate under 38 U.S.C. 314(m) since the disability requiring aid and attendance is 100 percent disabling. (38 U.S.C. 314(p)).

(2) If entitlement is under section 314(m), at the rate under 38 U.S.C. 314(n).

(3) If entitlement is under section 314(n), the rate under 38 U.S.C. 314(o) would be continued, since the disability previously causing the need for regular aid and attendance would then be totally disabling entitling the veteran to the maximum rate under 38 U.S.C. 314(p).

* * * * *

7. Section 3.665 is added to read as follows:

§ 3.665 Penal institutions—compensation.

(a) *General.* Any person specified in paragraph (c) of this section who is incarcerated in a Federal, State or local penal institution in excess of 60 days for conviction of a felony shall not be paid compensation or dependency and indemnity compensation (DIC) in excess of the amount specified in paragraph (d) of this section beginning on the 61st day of incarceration. A person whose benefits are subject to this reduction shall be informed of the rights of the person's dependents to an apportionment while the person is incarcerated, and the conditions under which payments to the person may be resumed upon release from incarceration. In addition, the person's dependents shall also be notified of their right to an apportionment if the Veterans' Administration is aware of their existence and can obtain their addresses.

(b) *Definitions.* For the purposes of this section the term "compensation" includes disability compensation under 38 U.S.C. 351. The term "dependency and indemnity compensation" (DIC) includes death compensation payable under 38 U.S.C. 321 or 341, death compensation and DIC payable under 38 U.S.C. 351, and any benefit payable under chapter 13 of title 38, United States Code. The term "release from incarceration" includes participation in a work release or halfway house program, parole, and completion of sentence. For purposes of this section, a felony is any offense punishable by death or imprisonment for a term exceeding 1 year, unless specifically categorized as a misdemeanor under the law of the prosecuting jurisdiction.

(c) *Applicability.* The provisions of paragraph (a) of this section are applicable to the following persons:

(1) A person serving a period of incarceration for conviction of a felony committed after October 7, 1980.

(2) A person serving a period of incarceration after September 30, 1980 (regardless of when the felony was committed) when the following conditions are met:

(i) The person was incarcerated on October 1, 1980; and

(ii) An award of compensation or DIC is approved after September 30, 1980.

(d) *Amount payable during incarceration*—(1) *Veteran rated 20 percent or more.* A veteran to whom the provisions of paragraphs (a) and (c) of this section apply with a service-connected disability evaluation of 20 percent or more shall receive the rate of compensation payable under 38 U.S.C. 314(a).

(2) *Veteran rated less than 20 percent.* A veteran to whom the provisions of paragraphs (a) and (c) of this section apply with a service-connected disability evaluation of less than 20 percent (even though the rate for 38 U.S.C. 314 (k) or (q) is paid) shall receive one-half the rate of compensation payable under 38 U.S.C. 314(a).

(3) *Surviving spouse, parent or child.* A surviving spouse, parent, or child, beneficiary to whom the provisions of paragraphs (a) and (c) of this section apply shall receive one-half the rate of compensation payable under 38 U.S.C. 314(a).

(e) *Apportionment*—(1) *Compensation.* All or part of the compensation not paid to an incarcerated veteran may be apportioned to the veteran's spouse, child or children and dependent parents on the basis of individual need. In determining individual need consideration shall be given to such factors as the apportionee claimant's income and living expenses, the amount of compensation available to be apportioned, the needs and living expenses of other apportionee claimants as well as any special needs, if any, of all apportionee claimants.

(2) *DIC.* All or part of the DIC not paid to an incarcerated surviving spouse or other children not in the surviving spouse's custody may be apportioned to another child or children. All or part of the DIC not paid to an incarcerated child may be apportioned to the surviving spouse or other children. These apportionments shall be made on the basis of individual need giving consideration to the factors set forth in paragraph (e)(1) of this section.

(f) *Effective dates.* An apportionment under this section shall be effective the date of reduction of payments made to the incarcerated person, subject to payments to the incarcerated person over the same period, if an informal claim is received within 1 year after notice to the incarcerated person as required by paragraph (a) of this section, and any necessary evidence is received within 1 year from the date of request by the Veterans' Administration; otherwise, payments may not be made for any period prior to the date of receipt of a new informal claim.

(g) *Incarcerated dependent.* No apportionment may be made to or on behalf of any person who is incarcerated in a Federal, State, or local penal institution for conviction of a felony.

(h) *Notice to dependent for whom apportionment granted.* A dependent for whom an apportionment is granted under this section shall be informed that the apportionment is subject to immediate discontinuance upon the incarcerated person's release or participation in a work release or halfway house program. A dependent shall also be informed that if the dependent and the incarcerated person do not live together when the incarcerated person is released (or participates in a work release or halfway house program) the dependent may submit a new claim for apportionment.

(i) *Resumption upon release*—(1) *No apportionment or family reunited.* If there was no apportionment at the time of release from incarceration, or if the released person is reunited with all dependents for whom an apportionment was granted, the released person's award shall be resumed the date of release from incarceration if the Veterans' Administration receives notice of release within 1 year following release; otherwise the award shall be resumed the date of receipt of notice of release. If there was an apportionment award during incarceration, it shall be discontinued date of last payment to the apportionee upon receipt of notice of release of the incarcerated person. Payment to the released person shall then be resumed at the full rate from date of last payment to the apportionee. Payment to the released person from date of release to date of last payment to the apportionee shall be made at the rate which is the difference between the released person's full rate and the sum of (i) the rate that was payable to the apportionee and (ii) the rate payable during incarceration.

(2) *Apportionment granted and family not reunited.* If there was an apportionment granted during incarceration and the released person is not reunited with all dependents for

whom an apportionment was granted, the released person's award shall be resumed as stated in paragraph (i)(1) of this section except that when the released person's award is resumed it shall not include any additional amount payable by reason of a dependent(s) not reunited with the released person. The award to this dependent(s) will then be reduced to the additional amount payable for the dependent(s).

(3) *Apportionment to a dependent parent.* An apportionment made to a dependent parent under this section cannot be continued beyond the veteran's release from incarceration unless the veteran is incompetent and the provisions of § 3.452(c) (1) and (2) are for application. When a competent veteran is released from incarceration an apportionment made to a dependent parent shall be discontinued and the veteran's award resumed as provided in paragraph (i)(1) of this section.

(j) *Increased compensation during incarceration*—(1) *General.* The amount of any increased compensation awarded to an incarcerated veteran that results from other than a statutory rate increase may be subject to reduction due to incarceration. This applies to a veteran whose compensation is subject to reduction under paragraphs (a) and (c) of this section prior to approval of an award of increased compensation as well as to veteran whose compensation is not subject to reduction under paragraphs (a) and (c) of this section prior to approval of an award of increased compensation.

(2) *Veteran subject to reduction under paragraphs (a) and (c) of this section.* If prior to approval of an award of increased compensation the veteran's compensation was reduced under the provisions of paragraphs (a) and (c) of this section, the amount of the increase shall be reduced as follows if the veteran remains incarcerated:

(i) If the veteran's schedular evaluation is increased from 10 percent to 20 percent or greater, the amount payable to the veteran shall be increased from one-half the rate payable under 38 U.S.C. 314(a) to the rate payable under section 314(a).

(ii) If the veteran's schedular evaluation was 20 percent or more, none of the increased compensation shall be paid to the veteran while the veteran remains incarcerated.

(3) *Veteran's compensation not subject to reduction under paragraphs (a) and (c) of this section prior to award of increased compensation.* If prior to the approval of an award of increased compensation the veteran is incarcerated in a Federal, State, or local penal institution for conviction of a felony and the veteran's compensation was not reduced under the provisions of paragraphs (a) and (c) of this section, none of the increased compensation shall be paid to the veteran for periods after October 7, 1980, subject to the following conditions:

(i) The veteran remains incarcerated after October 7, 1980 in a Federal, State, or local penal institution for conviction of a felony; and

(ii) The award of increased compensation is approved after October 7, 1980. If the effective date of the increase is prior to October 8, 1980, the amount payable for periods prior to October 8, 1980, shall not be reduced.

(4) *Apportionments.* The amount of any increased compensation reduced under this paragraph may be apportioned as provided in paragraph (e) of this section.

(k) *Retroactive awards.* Whenever compensation or DIC is awarded to an incarcerated person any amounts due for periods prior to date of reduction under this section shall be paid to the incarcerated person.

(l) *DIC parents.* If two parents are both entitled to DIC and were living together prior to the time of the DIC payable to one parent was reduced due to incarceration, they shall be considered as two parents not living together for the purpose of determining entitlement to DIC.

(m) *Conviction overturned on appeal.* If a conviction is overturned on appeal, any compensation or DIC withheld under this section as a result of incarceration for such conviction (less the amount of any apportionment) shall be restored to the beneficiary. (38 U.S.C. 210(c), 3113)

8. In § 3.666, the headnote and paragraph (d) are revised to read as follows:

§ 3.666 Penal institutions—pension.

* * * * *

(d) *Veteran entitled to compensation.* If an imprisoned veteran is entitled to a lesser rate of disability compensation, it shall be awarded as of the 61st day of imprisonment in lieu of the pension the veteran was receiving if the veteran has neither spouse nor child. If the veteran has a spouse or a child, compensation will be awarded only after the veteran has been furnished an explanation of the effect of electing compensation on the amount available for apportionment. If the veteran then requests compensation, it shall be awarded from the date veteran requests the Veterans Administration to take such action.

9. Section 3.750 is amended as follows:

(a) By removing the words "paragraph (c) of this section" and inserting "paragraphs (c) and (d) of this section" in paragraph (a); by removing the words "as well as pension" in the first sentence of paragraph (b); and by removing the words "pension or" twice in the first sentence and "or pension" in the last sentence of paragraph (c).

(b) Paragraph (d) is added to read as follows:

§ 3.750 Retirement pay.

* * * * *

(d) *Pension*—(1) *Improved pension.* A person specified in paragraph (a) of this section may receive improved pension and retirement pay concurrently without having to waive any portion of the person's retirement pay. In determining entitlement to improved pension, retirement pay shall be treated in the same manner as countable income from other sources.

(2) *Old-law and section 306 pension.* A person specified in paragraph (a) of this section may not receive old-law or section 306 pension and retirement pay concurrently without waiver of retirement pay as provided in paragraph (c) of this section concerning compensation. (38 U.S.C. 3104(a))

10. In § 3.809, the headnote and the introductory portion preceding paragraph (a) are revised as follows:

§ 3.809 Specially adapted housing under 38 U.S.C. 801(a).

A certificate of eligibility for assistance in acquiring specially adapted housing under 38 U.S.C. 801(a) may be extended to a veteran if the following requirements are met:

* * * * *

11. Following § 3.809 and the cross reference, a new § 3.809a is added to read as follows:

§ 3.809a Special home adaptation grants under 38 U.S.C. 801(b).

A certificate of eligibility for assistance in acquiring necessary special home adaptations under 38 U.S.C. 801(b) may be issued to a veteran who served after April 20, 1898, if the following requirements are met:

(a) The veteran is not entitled to a certificate of eligibility for assistance in acquiring specially adapted housing under § 3.809 nor had the veteran previously received assistance in acquiring specially adapted housing under 38 U.S.C. 801(a). A veteran who first establishes entitlement under this section and who later becomes eligible for a certificate of eligibility under § 3.809 may be issued a certificate of eligibility under § 3.809. However, no particular type of adaptation, improvement, or structural alteration

may be provided to a veteran more than once.

(b) The veteran is entitled to compensation for permanent and total disability which (1) is due to blindness in both eyes with 5/200 visual acuity or less, or (2) includes the anatomical loss or loss of use of both hands. (38 U.S.C. 801(b)).

(c) The assistance referred to in this section will not be available to any veteran more than once. (38 U.S.C. 802).

[FR Doc. 81-28166 Filed 9-28-81; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL 1908-3]

Approval of Revision of the Delaware State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The EPA announces approval of two Executive Orders submitted as a revision of the Delaware State Implementation Plan (SIP). The Orders pertain to financial disclosure and were submitted in accordance with Section 128 of the Clean Air Act. This action will be effective 60 days from the date of publication unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

DATE: This action is effective November 30, 1981.

ADDRESSES: Written comments should be addressed to Henry J. Sokolowski at the EPA Region III address listed below. Copies of the revision are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Media & Energy Branch, 6th & Walnut Streets, Curtis Building, Philadelphia, PA 19106, Attn: Patricia Sheridan;

State of Delaware, Department of Natural Resources & Environmental Control, Air Resources Section, Edward Tatnall Building, P.O. Box 1401, Dover, Delaware 19901, Attn: Robert R. French;

Public Information Reference Unit, EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460;

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Sheridan at (215) 597-8176.

SUPPLEMENTARY INFORMATION: Executive Orders Numbers One and Ten (Requirement of Financial Disclosure for Certain State Officials) were submitted in connection with the requirements of Section 128(a)(2) of the Clean Air Act regarding disclosure of potential conflict of interest by the head of the executive agency which approves permits or enforcement orders. The EPA has reviewed the Orders as a revision to the SIP and believes that they satisfy the intent of Section 128(a)(2) of the Clean Air Act. As a result of EPA's review, the Administrator is approving this revision.

The State provided certification that a public hearing was held to consider the revision and that the hearing was held in accordance with the notice required by § 51.4 of 40 CFR Part 51.

EPA views this action as noncontroversial. The approval imposes no new regulatory burden and has no effect on ambient air quality. The public should be advised that this action will be effective October 29, 1981. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because this action only approves State actions and imposes no new requirements.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. section 605(b) I certify that the SIP approvals under sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. This action constitutes a SIP approval under sections 110 and 172 of the Clean Air Act. This action only approves State actions. It imposes no new requirements.

Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Note.—The Incorporation by Reference provisions approved by the Director, Office of the Federal Register on July 1, 1981.

(42 U.S.C. 7401-642)

Dated: September 21, 1981.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart I—Delaware

1. Section 52.420 is amended by adding new paragraph (c)(22) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) The plan revision listed below was submitted on the date specified * * *

(22) A revision submitted by the State of Delaware on August 7, 1978 consisting of two Executive Orders for financial disclosure of certain State officials.

[FR Doc. 81-28047 Filed 9-28-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-6-FRL 1927-8]

Approval and Promulgation of State Implementation Plans: Approval of Conditionally Approved Elements in the Texas Plan for Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this notice is to approve certain elements of the State Implementation Plan (SIP) revisions for Texas which were conditionally approved on March 25, 1980 (45 FR 19231). When originally submitted, certain portions of the SIP contained minor deficiencies which the State agreed to correct or justify by a specified deadline. The deadlines committed to were December 31, 1979 and August 1, 1980. EPA received the additional information and revisions according to schedule, and proposed approval of the State's submittal on June 8, 1981 (46 FR 30366).

EFFECTIVE DATE: Effective on October 29, 1981.

ADDRESSES: Incorporation by reference material is available for inspection during normal business hours at the following locations:

The Office of the Federal Register, 1100 L St., N.W., Washington, D.C. Room 8401;

Environmental Protection Agency, Public Information Reference Unit, EPA Library, 401 M St., N.W., Washington, D.C. Room 2922.

FOR FURTHER INFORMATION CONTACT: Donna Ascenzi, Implementation Plan Section, Air Programs Branch, Air and Hazardous Materials Division, U.S. EPA Region 6, 1201 Elm Street, Dallas, Texas 75270 (214) 767-1518.

SUPPLEMENTARY INFORMATION: EPA took final action to conditionally approve certain elements of the Texas plan on March 25, 1980. The conditional approvals being acted on under this notice are as follows.

(1) Under the conditional approval of Regulation V, the State was required to submit a demonstration of consistency with the Agency's 5 percent rule for degreasing operations in Harris County for which the State had included exemptions, and revisions to the regulation for cutback asphalt and additional control measures for degreasing operations. The demonstration was required to be submitted by December 31, 1979, and revisions to Regulation V by August 1, 1980.

(2) Under the conditional approval of the particulate matter (TSP) plans for San Benito, Brownsville, Corpus Christi 1,[1] Corpus Christi 2, Dallas 1, Dallas 3, and El Paso 4, the State was required to submit adopted control strategies and revisions to Regulation 1 (if necessary) by August 1, 1980.

On December 21, 1979 and July 25, 1980, the State submitted the required demonstration, and regulation revisions and TSP control strategies, respectively. EPA reviewed the State's submittals and on June 8, 1981 the Agency proposed approval of the revisions. Under that notice, EPA discussed the content of the State's submittals in detail and solicited public comments on the Agency's proposed action. No comments were received. Therefore, EPA is hereby withdrawing conditional approval and is fully approving these portions of Regulation V and the TSP control strategies for San Benito, Brownsville, Corpus Christi 1, Corpus Christi 2, Dallas 1, and El Paso 4.

[1] This notation was used in the Texas SIP to differentiate among the nonattainment areas within one city. For example, the two nonattainment areas in Corpus Christi are Corpus Christi 1 and Corpus Christi 2.

It should be noted that on March 28, 1980, the State submitted Board Resolution R80-5, which requested that Dallas 3 be redesignated as an attainment area. Since the Agency has not taken final action on this redesignation request, EPA will take no action on the conditional approval for the Dallas 3 nonattainment area at this time.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final rulemaking is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of September 29, 1981. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not Major because it is merely approving a State action. It will impose no new regulatory action.

Pursuant to the provisions of 5 U.S.C. 605(b) I certify that the SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. This action only approves State actions. It imposes no new requirements.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Incorporation by reference of the State Implementation Plan for the State of Texas was approved by the Director of the Federal Register on July 1, 1981.

This notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended.

Dated: September 21, 1981.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart SS—Texas

1. In § 52.2270, paragraph (c) is amended by adding subparagraph (27), which reads as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(27) Revisions to Regulation V (i.e., Subchapters 115.171-176) and particulate matter (TSP) control strategies for the nonattainment areas of San Benito, Brownsville, Corpus Christi 1, Corpus Christi 2, Dallas 1, and El Paso 4 were adopted by the Texas Air Control Board on July 11, 1980, and submitted by the Governor on July 25, 1980.

§ 52.2275 [Amended]

2. Section 52.2275 is amended by removing paragraphs (a)(3), (a)(4)(i), and (a)(4)(ii), and redesignating paragraphs (a)(5) and (a)(6) as (a)(1) and (a)(2).

3. Section 52.2276 is revised to read as follows:

§ 52.2276 Control strategy and regulations: Particulate matter.

(a) Part D Conditional Approval. The Texas plan for total suspended particulate (TSP) for the nonattainment area of Dallas 3 is conditionally approved until the State satisfactorily completes the following items:

(1) Draft SIP revision supplement submitted to EPA by March 3, 1980.

(2) Public hearing completed by May 5, 1980.

(3) Adopt revision and revised Regulation I as it pertains to control of nontraditional sources, if necessary, and submit to EPA by August 1, 1980.

[FR Doc. 81-28053 Filed 9-28-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-7-FRL-1923-3]

Approval and Promulgation of Implementation Plans; Iowa

AGENCY: Environmental Protection Agency.

ACTION: Final Rulemaking.

SUMMARY: This document removes several obsolete provisions relating to the ozone nonattainment plan for Linn County, (Cedar Rapids) Iowa, from the Code of Federal Regulations (CFR). This action is necessary because Linn County has been redesignated to attainment for ozone. It is no longer subject to nonattainment plan requirements. A condition of approval on the Iowa State Implementation Plan is removed from the Code of Federal Regulations (CFR) and other related changes are made.

EFFECTIVE DATE: October 29, 1981.

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler, Environmental Protection Agency, 324 East 11th Street,

Kansas City, Missouri 64106, 816–374–3791.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) Linn County, Iowa, was designed nonattainment for photochemical oxidants (ozone) based on monitoring data from a site in Cedar Rapids that showed the National Ambient Air Quality Standards were exceeded for that pollutant. Because of this designation, the State of Iowa was required by Part D (Sections 171–178) of the Clean Air Act to submit revisions to the Iowa State Implementation Plan (SIP) designed to attain the standards in this area. The state submitted these revisions to EPA on June 22, 1979.

EPA took final action on this submission on March 6, 1980 (45 FR 14561). With respect to the Cedar Rapids area, EPA disapproved the SIP with respect to authority to prevent construction of new sources of VOC and conditionally approved it with respect to reasonably available control measures for existing sources of VOC. Section 172(b)(6) and Section 172(b)(3), respectively, require the imposition of such regulations for pollutants for which an area is designated nonattainment under Section 107 of the Clean Air Act.

On March 19, 1981, Linn County was redesignated to attainment for the ozone NAAQS (46 FR 17557). (Note: The photochemical oxidants standard was revised and the criteria pollutant identified as ozone on February 8, 1979, at 44 FR 8220.) Since the area is no longer designated nonattainment, the provisions of Part D of the Act are no longer required and the restrictions for not having an approved Part D plan no longer apply.

Today's action removes the Part D requirements on Linn County from the CFR. In particular the disapproval with respect to the permit requirements of Section 173 and the conditions requiring VOC controls on existing sources are removed and the attainment date table is amended to show the ozone standard is attained.

This action is being made final today without proposal. EPA finds good cause for taking final action without prior notice and public comment because there are no significant issues for public comment. EPA solicited public comment prior to final action on the redesignation described above. Once the area was redesignated it was no longer subject to the requirements of Part D. As a result of the redesignation, EPA lacks the authority to impose the disapproval and conditional approval based on Part D requirements.

Note.—Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that the rule described herein will not have a significant enconomic impact on a substantial number of small entities. It imposes no new requirements.

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule is not "major" because it imposes no new regulatory requirements. Hence 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.

(Secs. 110 and 301, Clean Air Act, as amended (42 U.S.C. 7410 and 7601))

Dated: September 21, 1981.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart Q—Iowa

§ 52.822 [Amended]

1. In § 52.822, paragraph (b) is removed.

§ 52.823 [Amended]

2. Section 52.823 is amended by removing the words "and for sources of volatile organic compounds in the Linn County ozone nonattainment area."

§ 52.826 [Amended]

3. In § 52.826, paragraph (b) is removed and reserved.

§ 52.827 [Amended]

4. In § 52.827, the entry in the column "Ozone," in the line beginning "a. Cedar Rapids," is changed from "d" to "c."

[FR Doc. 81-28223 Filed 9-28-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 180

[PP 9F2178/R350; PH-FRL-1941-6]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals In or On Raw Agricultural Commodities; Ethephon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the residues of the plant regulator ethephon [(2-chloroethyl) phosphonic acid] in or on the raw agricultural commodity grapes at 2.0 parts per million (ppm). This regulation was requested by Union Carbide Agricultural Products Company. This regulation establishes the maximum permissible level for residues of the plant regulator in or on grapes.

EFFECTIVE DATE: Effective on September 29, 1981.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. 3708 (A–110), 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 412E, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7066).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the Federal Register of April 13, 1979 (44 FR 22175) that Amchem Products, Inc. (now Union Carbide Agricultural Products Company), Ambler, PA 19002, had submitted pesticide petition 9F2178 to the EPA. The petition proposed that a tolerance be established for the residues of the plant regulator ethephon [(2-chloroethyl) phosphonic acid] in or on the raw agricultural commodity grapes at 2.0 ppm.

No comments or requests for referral to an advisory committee were received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance included an acute oral LD_{50} study with an LD_{50} of 4.2 grams (gm)/ kilogram (kg) for rats; an acute dermal LD_{50} study with an LD_{50} of 5.73 gm/kg; an acute inhalation LC_{50} with an LC_{50} greater than 2 mg/liter for rats; an eye irritation study (rabbits) (with product corrosive); a dermal irritation (irritant based on acute dermal LD_{50} study); a 90-day feeding study with dogs (0, 200, 1,000, 7,500 ppm) with no-observed-effect levels (NOEL) less than 200 ppm (cholinesterase (ChE)) and equal to or greater than 1,000 ppm (systemic); a 90-day feeding study with rats (0, 200, 1,000, 7,500 ppm) with a NOEL of 200 ppm (ChE) and no systemic effects; a 3-generation reproduction study (rats) with a NOEL greater than 1,500 ppm (reproductive effects); a teratology study (rats) with a NOEL greater than 600 mg/kg; a neurotoxicity study (hens)-negative at 1,000 mg/kg/day; a 2-year chronic feeding/oncogenicity study with rats (0, 30, 300, 3,000 ppm) with a NOEL of 30 ppm (ChE effects) and 3,000 ppm for

systemic effects and no oncogenic effects noted; a 2-year chronic feeding study (dogs) with NOEL's less than or equal to 50 ppm (ChE) and 300 ppm (systemic effects); and a 3-week dermal application study (no systemic toxicity, dermal effects only).

Desirable data that are lacking from the petition are a teratology study with a second species, a mouse oncogenicity study and a screening battery of mutagenicity tests. The company has agreed to perform the studies listed above and to remove the use from the label should the results of the above studies exceed the risk criteria for chronic toxicity as stated in 40 CFR 162.11 of the regulations.

The acceptable daily intake (ADI) is calculated to be 0.075 mg/kg/day based on a NOEL of 300 ppm (2-year chronic dog-feeding study) and using a safety factor of 100. For 60-kg person, the maximum permissible intake (MPI) is 4.5 mg/day. The theoretical maximum residue contribution (TMRC) for the existing tolerances (several commodities from 0.1 ppm to 30.0 ppm) is 0.4051 mg/day for a 1.5 kg diet. The tolerance on grapes (2.0 ppm) and the food additive regulation (FAP 9H5207/R82) for raisins at 12.0 ppm will utilize 0.46 percent of the ADI and add 0.02085 mg/kg to the TMRC to give a total TMRC of 0.428 mg/day which represents 9.5 percent of the ADI. Establishment of the approved tolerance on cottonseed (2.0 ppm) will utilize an additional 0.10 percent of the ADI for a total of 9.6 percent.

No actions are currently pending against the continued registration of ethephon and no rebuttable presumption against registration (RPAR) criteria have been exceeded. The nature of the residues in plants and animals is adequately understood. An adequate analytical method (gas chromatography using a phosphorous-specific alkali thermionic detector) is available for enforcement purposes. Secondary residues are not expected in milk, meat, poultry, or eggs (§ 180.6(a)(3)).

Any person adversely affected by this regulation may, by October 29, 1981, file written objections with the Hearing Clerk, EPA, Rm. M-3708 (A-110), 401 M St., SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Effective on September 29, 1981.

(Sec. 408(d)(2), 68 Stat. 512, (21 U.S.C. 346a(e)))

Dated: September 17, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.300 is amended by alphabetically inserting the raw agricultural commodity "grapes" to read as follows:

§ 180.300 Ethephon; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Grapes	2.0
* * * * *	

[FR Doc. 81-28301 Filed 9-28-81; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Part 180

[PP 9E2244/R352; PH-FRL-1942-1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; N,N-Diethyl-2-(1-Naphthalenyloxy) Propionamide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide *N,N*-diethyl-2-(1-naphthalenyloxy) propionamide in or on the raw agricultural commodity coffee beans at 0.1 part per million (ppm). This regulation was requested by Stauffer Chemical Co. This rule establishes the maximum permissible level for residues of the herbicide in or on coffee beans.

EFFECTIVE DATE: September 29, 1981.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Office of Pesticide Programs, Registration Division (TS-767), Environmental Protection Agency, Rm. 412E, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-7066).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule published in the Federal Register of August 5, 1981 (46 FR 39865) that Stauffer Chemical Co., 1200 S. 47th St., Richmond, CA 94804, had filed a pesticide petition (PP 9E2244) with the EPA proposing to amend 40 CFR 180.328 by establishing a tolerance for residues of the herbicide *N,N*-diethyl-2-(1-naphthalenyloxy) propionamide in or on the raw agricultural commodity coffee beans at 0.1 ppm.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data submitted included an acute oral LD_{50} study (rats) with a LD_{50} greater than 5,000 milligrams (mg)/kilogram (kg)/day; a 90-day feeding study (rats) with a no-observable-effect-level (NOEL) of 25 mg/kg/day; a 90-day feeding study (dogs) with a NOEL of 30 mg/kg/day; a 2-year feeding/oncogenicity study (rats) with a tentative NOEL of 10 mg/kg/day; mutagenicity studies (rec-assay, host-mediated assay, Ames test) all negative for metagenic effects; and an acceptable general metabolism study on rats.

Desirable studies submitted by the company and currently undergoing final review by the agency are a 2-year feeding/oncogenicity study in rats, a 2-year oncogenicity study in mice, a 3-generation reproduction study in rats, and a teratology study in rats.

The provisional acceptable daily intake (ADI) is calculated to be 0.0125 mg/kg/day based on a NOEL of 25 mg/kg/day in the 90-day rat feeding study and using a safety factor of 2000. For a 60 kg person, the maximum permissible intake (MPI) is 0.75 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerance (citrus fruits, figs, nuts, pome fruits, stone fruits, and fruiting vegetables at 0.1 ppm) and from recently

established tolerances (46 FR 39827, August 5, 1981; artichokes, asparagus, avocados, kiwifruit, mint, olives, and persimmons at 0.1 ppm) is 0.017 mg/day for a 1.5 kg diet. The proposed 0.1 ppm tolerance on coffee beans will utilize 0.15 percent of the ADI and add 0.0011 mg/day to the TMRC to give a total TMRC of 0.0176 mg/day (1.5 kg diet), which represents 2.42 percent of the ADI.

There are no regulatory actions pending against the herbicide and no Rebuttable Presumption Against Registration (RPAR) criteria have been exceeded. The nature of the residues in plants are adequately understood. An adequate analytical method (gas-liquid chromatography using the Coulson conductivity detector specific for nitrogen) is available for enforcement purposes. Since coffee is not a feed item, there is no reasonable expectation of finite residues in meat, milk, poultry, and eggs from the proposed use. Although review of long-term data has not been completed, the agency has concluded, based on the information summarized above, that the establishment of a tolerance of 0.1 ppm for residues of the herbicide *N,N,*-diethyl-2-(1-naphthalenyloxy)propionamide in or on coffee beans will protect the public health. Therefore the tolerance is established as set forth below.

Any person adversely affected by this regulation may, on or before October 29, 1981, file written objections with the Hearing Clerk, EPA, Rm. M-3708 (A-110), 401 M St., SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Effective date: September 29, 1981.

(Sec. 408(d)(2), 68 Stat. 512; (21 U.S.C. 346a(d)(2)))

Dated: September 16, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.328 is amended by alphabetically inserting the raw agricultural commodity "coffee beans" to read as follows:

§ 180.328 N,N-diethyl-2-(1-naphthalenyloxy)propionamide; tolerances for residues.

* * * * *

Commodity	Part per million
Coffee beans	0.1(N).

* * * * *

[FR Doc. 81-28163 Filed 9-28-81; 8:45 am]

BILLING CODE 6560-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 5989

[CA-584]

California; Powersite Cancellation No. 349, Partial Cancellation of Powersite Classification No. 85.

Correction

In FR Doc. 81-26206 appearing on page 44982, in the issue of Wednesday, September 9, 1981 make the following correction:

On page 44982, third column, the second line from the bottom of the page should read: "N½SW¼SE¼, N½NW¼SE¼SE¼).".

BILLING CODE 1505-01-M

Fish and Wildlife Service

50 CFR Part 32

Certain National Wildlife Refuges in Oklahoma and Texas

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: It has been determined that the opening to hunting of certain National Wildlife Refuges in the States of Oklahoma and Texas is compatible with the objectives for which these areas were established, will utilize a renewable national resource, and will provide additional recreational opportunity to the public. This document establishes special regulations effective for the approaching upland game hunting season.

EFFECTIVE DATES: September 29, 1981 through March 1, 1982.

FOR FURTHER INFORMATION CONTACT: The Refuge Manager at the address and/or telephone number listed below in the body of these Special Regulations.

SUPPLEMENTARY INFORMATION: The author of this document is W. Ellis Klett, Area Manager, Austin Area Office, U.S. Fish and Wildlife Service, 300 E. 8th Street, Room G-121, Austin, Texas 78701, 512-397-5434.

Hunting is permitted on the National Wildlife Refuges indicated below in accordance with applicable State and Federal regulations, subject to additional Special Regulations and conditions as indicated. Portions of the refuges which are open to hunting are designated by signs and/or delineated on maps. Special conditions applying to individual refuges are listed on leaflets available at refuge headquarters and from the Area Manager, U.S. Fish and Wildlife Service, 300 E. 8th Street, Room G-121, Austin, Texas 78701.

The Refuge Recreation Act of 1962 (16 U.S.C. 460K) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the areas were established, and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation. The recreational use authorized by these

regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Because of the time limitation involved to coordinate the State and Federal hunting regulations and because of the rapid approach of the hunting seasons, the U.S. Department of the Interior has concluded that "good cause" exists within the meaning of 5 U.S.C. 553(d)(3), of the Administrative Procedure Act to expedite the implementation of these special regulations. Therefore the effective date is September 29, 1981.

Note.—The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193), and that the rulemaking would not have "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (P.L. 96-354) and 43 CFR 14.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Oklahoma

Sequoyah National Wildlife Refuge, John R. Akin, Refuge Manager, Route 1, Box 18A, Vian, Oklahoma 74962, 918-773-5251. Upland game. Special Conditions: Hunting seasons are as follows: (1) Squirrel, September 29, 1981 through January 1, 1982. (2) Quail, November 20, 1981 through the last day of the regular 1981-82 waterfowl season. (3) Rabbits, October 1, 1981 through the last day of the regular 1981-82 waterfowl season. Hunting shall be in accordance with all applicable state regulations covering the hunting of quail, squirrel, and rabbits, subject to the following special conditions: (a) Only shotguns without slug ammunition or longbow and arrow are permitted. (b) Firearms and/or archery equipment are prohibited in area not posted as open to public hunting, except the Kerr-McClellan Navigation Channel where they must be cased or broken down. (c) Dogs may be used for hunting quail or rabbit, but must be under immediate control or supervision and restrained from pursuit of protected species. (d) Camping or possession of firearms on the refuge from sunset to sunrise is prohibited. (e) All vehicles must be parked in designated parking areas as shown on maps available at refuge headquarters and at leaflet boxes throughout the public hunting area.

Tishomingo National Wildlife Refuge, Larry M. Ivy, Refuge Manager, P.O. Box 248, Tishomingo, Oklahoma 73460, 405-371-2402. Upland Game. Special Conditions: (1) Upland game hunting is permitted only on the Tishomingo Wildlife Management Unit of the Tishomingo NWR in accordance with state seasons and regulations. (2) No upland game hunting is permitted in the goose hunting zone during the goose hunting season. (3) Hunters entering and leaving the hunting area shall check in at designated checking stations. (4) No vehicular access will be allowed after the close of waterfowl season; access will be walk-in only. Under the provisions of 50 CFR § 26.32, additional regulations may apply. Contact the Refuge Manager for further information.

Washita National Wildlife Refuge, Evan V. Klett, Refuge Manager, Route 2, Box 100, Butler, Oklahoma 73625, 405-473-2205. Upland game. Special Conditions: Hunting seasons are as follows: (1) Quail, November 20, 1981 through February 1, 1982. (2) Rabbit, November 20, 1981 through February 1, 1982. (a) Shotguns only will be allowed for quail and rabbit hunting. Hunting is permitted Mondays, Tuesdays, Thursdays, Fridays, and Saturdays and all legal national holidays.

Texas

Aransas National Wildlife Refuge (Matagorda Unit) E. Frank Johnson, Refuge Manager, P.O. Box 100, Austwell, Texas 77950, 512-286-3559. Upland game. Special Conditions: (1) Unless otherwise specified, all laws and regulations published by the Texas Parks and Wildlife Department concerning bobwhite quail hunting will be applicable. (2) Shotguns only will be allowed for quail hunting. (3) Hunting hours will be from 8:00 a.m. until 4:00 p.m. throughout the designated season. (4) All hunters must report to the island docks for briefing on endangered species and hunter conduct. Once hunters have arrived on the island they will be transported to or from the hunting area at 8:00 a.m., 12:00 p.m. and 4:00 p.m. only. (5) In the event whooping cranes begin using habitat within the hunt area, all or portions of that area will be closed to hunting.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28110 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 32

Certain National Wildlife Refuges in Oklahoma and Texas

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: It has been determined that the opening of certain National Wildlife Refuges in the States of Oklahoma and Texas is compatible with the objectives for which these areas were established, will utilize a renewable national resource, and will provide additional recreational opportunity to the public. This document establishes special regulations effective for the upcoming hunting season for big game including hunting deer and wapiti (elk).

EFFECTIVE DATES: September 29, 1981 through December 31, 1981.

FOR FURTHER INFORMATION CONTACT: The Refuge Manager at the address and/or telephone number listed below in the body of these Special Regulations.

SUPPLEMENTARY INFORMATION: The author of this document is W. Ellis Klett, Area Manager, Austin Area Office, U.S. Fish and Wildlife Service, 300 E. 8th Street, Room G-121, Austin, Texas 78701. Telephone 512-397-5434.

Hunting is permitted on the National Wildlife Refuges indicated below in accordance with applicable State and Federal regulations, subject to additional Special Regulations and conditions as indicated. Portions of the refuges which are open to hunting are designated by signs and/or delineated on maps. Special conditions applying to individual refuges are listed on leaflets available at refuge headquarters and from the Area Manager, U.S. Fish and Wildlife Service, 300 E. 8th Street, Room G-121, Austin, Texas 78701.

The Refuge Recreation Act of 1962 (16 U.S.C. 460K) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the areas were established, and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation. The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. This determination is based

upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Note.—The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193), and that the rulemaking would not have "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (P.L. 96-354) and 43 CFR 14.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Oklahoma

Salt Plains National Wildlife Refuge, Ronald S. Sullivan, Refuge Manager, Route 1, Box 76, Jet, Oklahoma 73749, 405–626–4794. White-tailed Deer. Special conditions: (1) An archery hunt on October 17–18 and October 24–25, 1981. Thirty-two either sex permits for each 2-day hunt for a total of 64 permits. A muzzle-loading rifle hunt, November 14–15, 1981. Twenty-eight either sex permits for the single 2-day hunt. Limited to flintlock rifles only, .40-caliber or larger. A modern-gun hunt, November 21–22, November 24–25, November 28–29. Twenty-five permits for each of these 2-day hunts for a total of 75 permits. Participants will be selected by the Oklahoma Department of Wildlife Conservation through its application-special permit system. (2) Permitted hunters must check in at the refuge office prior to entering the assigned hunting area and must check out at the refuge office upon leaving the area. (3) Shooting hours on the refuge will end each day at sunset. State hunting regulations will apply in all points not specifically described above.

Tishomingo National Wildlife Refuge, Larry M. Ivy, Refuge Manager, P.O. Box 248, Tishomingo, Oklahoma 73460, 405–371–2402. White-tailed Deer. Special conditions: (1) Public hunting of white-tailed deer is permitted on the Tishomingo Wildlife Management Unit (WMU) and Delta Unit of the Tishomingo National Wildlife Refuge. (2) The open season for archery deer hunting will be on the Tishomingo WMU from October 17 through November 15, 1981 and December 1 through December 31, except during the goose hunting season in the goose hunting zone. (3) The Tishomingo WMU gun deer hunt will be held November 10, 12, 14, and 15, 1981. (4) The Tishomingo WMU will be closed to all public use except gun deer hunting on November 10, 12, 14, and 15, 1981. (5) The Tishomingo NWR Delta Unit gun deer hunt will be November 23 through November 27, 1981. (6) Legal game for both the Tishomingo WMU and Delta Unit hunts will be "either sex." (7) Gun deer hunting on the Tishomingo WMU will be by permits. Fifty (50) permits will be issued for each 1-day hunt. Permits will be awarded by public drawing conducted by the Oklahoma Department of Wildlife Conservation. (8) Hunters, upon entering and leaving the hunting areas, will check in and out at designated check stations.

Wichita Mountains Wildlife Refuge, Robert A. Karges, Refuge Manager, RR 1, Box 448, Indiahoma, Oklahoma 73552, 405–429–3222. Wapiti (Elk). Special Conditions: (1) The first elk hunt will be held on December 8, 9, 10, and the second elk hunt will be on December 15, 16, and 17, (Tuesdays, Wednesdays, and Thursdays) 1981. (2) Except as provided in special conditions below, the applicable portions of the Quanah-Elk Mountain Unit will be closed to all public use except elk hunting during hunt period. (3) Authorized hunters may retain approved, unloaded hunting rifles and camp overnight (in Fawn Creek or Burford Recreation Areas only) during this period when the Quanah-Elk Mountain Unit is closed to all other public use. Such camping hunters may be accompanied by, not to exeed, one camping companion who will be confined to Fawn Creek, Burford Recreation Area or refuge headquarters during hunt period unless authorized to assist with the removal of game by the Refuge Manager or his agent. (4) Authorized hunters will comply with all official written refuge rules and regulations issued at mandatory hunter briefings. Violation of any of these rules and regulations or of any Federal or State hunting law, will terminate the hunt of the person or persons so involved.

Texas

Aransas National Wildlife Refuge, E. Frank Johnson, Refuge Manager, P.O. Box 68, Austwell, Texas 77950, 512–286–3559. White-tailed Deer. Special Conditions: (1) All hunters must check in and out of the hunt area at the refuge entrance on Texas Farm Road 2040. (2) A valid 1980–81 Texas hunting license is required of each participant. (3) No camping will be allowed on the refuge. (4) In the event of the arrival of whooping cranes, the refuge or any portion thereof may be immediately closed to hunting. Archery Hunt: Archery hunting of white-tailed deer and feral hogs is permitted on the Aransas Refuge during the following period: October 2 through October 5, 1981. Hunting shall be in accordance with applicable state hunting regulations subject to the following special conditions: (a) A bag limit of three (3) deer, with no more than two (2) buck. There is no limit as to the number of wild hogs that may be taken. (b) A current state archery tag is required. (c) All hunting arrows must bear the name and address of the user in a non-water-soluble medium. (d) No target or field arrows are permitted on the refuge. (e) No deer may be removed from the refuge without a metal transportation seal being attached to the carcass by a refuge officer. Firearms Hunt: (1) Firearm hunting of white-tailed deer and feral hogs is by permit only and will extend from October 11, 1981 through October 15, 1981, inclusive. Each hunter is allowed 1 day to hunt. (2) Hunting hours correspond with Texas State law. All hunters must be out of the refuge by 9:00 p.m. (3) The bag limit per hunter for the total firearm season is one deer, either sex. There is no limit as to the number of feral hogs that may be taken. (4) All hunters will wear international orange cap and vest. (5) There will be a lottery drawing with 200 hunter permits for each 1-day hunt with 1,000 total hunter permits drawn.

Violation of any of these rules or regulations or of any Federal or State hunting law will terminate the hunt of the person(s) so involved.

Laguna Atascosa National Wildlife Refuge, Gary M. Burke, Refuge Manager, P.O. Box 2683, Harlingen Texas 78550, 512–748–2426, White-tailed Deer. Special Conditions: (1) The open season for hunting deer with long-bows on the refuge is from 30 minutes before sunrise until 2:00 p.m., October 16 through October 25, 1981. (2) The bag limit is two white-tailed deer, either sex. (3) A valid state hunting license and archery stamp are required. Texas hunting regulations are applicable to the hunt. (4) All hunters must obtain a permit prior to hunting. Permits may be obtained in advance by writing to: Refuge Manager, Laguna Atascosa National Wildlife Refuge, P.O. Box 450, Rio Hondo, Texas

78583, or pickup up at the hunter check station. One permit will be good for all hunt days. (5) Hunting is permitted from stands, temporary blinds, or by stalking. No driving of deer is permitted. (6) The following are prohibited: Firearms and crossbows; hunting within 50 yards of county roads, tour roads and areas closed to hunting; hunting from vehicles; use of any vehicle off county or refuge roads; use of dogs or horses; permanent blinds; possession or use of target or field arrows; overnight camping; littering. (7) Hunters under 16 years of age must be accompanied by an adult 21 years of age or older. (8) All deer killed must be taken to the hunter check station to have a special tag attached prior to leaving the refuge. (9) The open season for hunting deer with firearms on the refuge is 30 minutes before sunrise until 2:00 p.m., December 11 through December 15, 1981. (10) Legal bag will be two white-tailed deer. (11) Hunting is by permit only. Permits will be selected by a drawing. A total of 125 permits will be issued; 25 per hunt-day. (12) Under the provisions of 50 CFR § 2632 additional regulations may apply. For further information contact the Refuge Manager. (13) Individuals selected will be notified.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28111 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 32

National Wildlife Refuges in Florida, Georgia and South Carolina; Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: It has been determined that the opening to hunting of certain national wildlife refuges in Florida, Georgia and South Carolina is compatible with the objectives for which the areas were established, will utilize a renewable natural resource and will provide additional recreational opportunity to the public. This document establishes special regulations effective for the upcoming hunting seasons for certain upland game and big game species.

EFFECTIVE DATES: September 29, 1981 through September 7, 1982.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate refuge manager at the address or telephone number listed below:

Donald J. Hankla, Area Manager, U.S. Fish and Wildlife Service, 15 N. Laura Street, Jacksonville, Florida 32202, telephone (904) 791-2267.

M. Bruce Blihovde, Refuge Manager, Lake Woodruff National Wildlife Refuge, P.O. Box 488, DeLeon Springs, Florida 32028, telephone (904) 985-4673.

John R. Eadie, Refuge Manager, Okefenokee National Wildlife Refuge, P.O. Box 117, Waycross, Georgia 31501, telephone (912) 283-2587.

Ronnie L. Shell, Refuge Manager, Piedmont National Wildlife Refuge, Round Oak, Georgia 31080, telephone (912) 986-5541.

John P. Davis, Refuge Manager, Savannah National Wildlife Refuge Complex (Savannah, Blackbeard Island, Pinckney Island, Harris Neck, and Wassaw Island Refuges), P.O. Box 8487, Savannah, Georgia 31412, telephone (912) 944-4415.

Joe D. White, Refuge Manager, St. Marks National Wildlife Refuge, P.O. Box 68, St. Marks, Florida 32355, telephone (904) 925-6121.

Martin D. Perry, Refuge Manager, St. Vincent National Wildlife Refuge, P.O. Box 447, Apalachicola, Florida 32320, telephone (904) 653-8808.

SUPPLEMENTARY INFORMATION: The author of this document is Howard Poitevint, Jacksonville Area Office, U.S. Fish and Wildlife Service, 15 North Laura Street, Jacksonville, Florida 32202 (904) 791-2267.

General Conditions

1. Hunting is permitted on national wildlife refuges indicated below in accordance with 50 CFR Part 32, State regulations and the following applicable general conditions and special regulations:

The Refuge Recreational Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires: (a) that no area of the National Wildlife Refuge System is used for forms of recreation not directly related to the primary purposes for which the area was established, and (b) that funds are available for the development, operation and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which Harris Neck, Lake Woodruff, Okefenokee, Piedmont, Savannah, Blackbeard Island, Pinckney Island, Wassaw Island, St. Marks and St. Vincent National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Because of the time limitation involved to coordinate the state and federal hunting regulations, and because of the rapid approach of the hunting seasons, the USDI has concluded that "good cause" exists within the meaning of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act to expedite the implementation of these special regulations. Therefore, the effective date is September 29, 1981.

Note.—The Department of the Interior has determined that this document is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193) and that the rulemaking would not have a "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act and 43 CFR Part 14.

2. All hunters must possess a refuge permit to hunt on a national wildlife refuge. Permits are available from the refuge headquarters and/or check stations. Permits must be carried while hunting, and are nontransferable.

3. Under the provisions of 50 CFR 26.32 additional regulations may apply. Contact the reefuge manager for further information.

4. Ingress and egress points for motor vehicles and/or boats are limited to designated check stations or other specified areas.

5. Deer, hogs and turkeys harvested during scheduled hunts for these species must be checked by refuge personnel before leaving the refuge.

6. Muzzleloading shotguns used during primitive gun big game hunts must be 20 gauge or larger loaded with single shot.

7. Unless specified, dogs are not permitted on refuge areas during hunts.

8. Only temporary blinds are permitted.

9. Personal property must be retrieved by owner and removed from the refuge daily, unless otherwise specified.

10. Use of buckshot is prohibited on refuge big game hunts (except the Savannah NWR feral hog hunt and Okefenokee NWR shotgun hunts).

11. Portions of refuges open for hunts will be closed to other public use activities during these hunts.

§ 32.22 Special regulations; upland game for individual wildlife refuge areas.

Florida

St. Marks National Wildlife Refuge

The hunt area for upland game is 600 acres of the St. Marks Unit; which is cooperatively administered by the State of Florida as part of the Aucilla Wildlife Management Area according to all applicable State rules and regulations.

Georgia

Piedmont National Wildlife Refuge

(1) Species permitted: Quail, squirrel and rabbit. (2) Season: Daily except Sundays during the State's regular season. (3) Closed areas: Compartment 25, the posted wildlife trail section of Compartment 14, and the auto tour route in compartment 21. (4) Permits: Available at refuge headquarters during the hunt. (5) Dogs are allowed for quail hunting only. (6) Handguns and buckshot are prohibited on the refuge.

§ 32.32 Special regulations; big game for individual wildlife refuges.

Florida

White-tailed deer, turkey, and/or feral hogs may be hunted on one or more of the following refuge areas:

Lake Woodruff National Wildlife Refuge

(1) Archery hunts: (a) species permitted: deer and feral hogs, (b) season: September 18–20 and October 2–4, 1981, (c) bag limit: deer—State regulations, hogs—no limit, (d) sex: either sex, (e) permits—no quota, permits available at refuge headquarters prior to hunt and at the check station during the hunt. (2) Muzzleloading firearms hunts: (a) species permitted: deer and feral hogs, (b) season: October 16–18 and October 30-November 1, 1981, (c) bag limit: deer—State regulations, hogs—no limit, (d) sex: bucks only, must have visible antlers, (e) permits—125 for each hunt. (3) Stand hours: One-half hour before sunrise to 9 a.m. Stalking or movement through the hunt area is not permitted during stand hours. (4) No one may enter the hunt area prior to two hours before sunrise and all hunters must clear the area by two hours after sunset.

St. Marks National Wildlife Refuge

A 600-acre portion of the St. Marks Unit is cooperatively administered by the State for big game hunting as a part of the Aucilla Wildlife Management Area. In addition, 14,000 acres of the Wakulla Unit and 18,000 acres of the Panacea Unit area will be open to big game hunting subject to the aforementioned general conditions and the following special conditions:

(1) Archery hunts: (a) species permitted: deer and feral hogs, (b) season: November 20, 21, 22, 1981, (c) bag limit: deer—one deer; hogs—no limit, (d) sex: either sex (except spotted fawn), (e) permits: limited to 400. (2) Muzzleloading firearms hunt: (a) species permitted: deer and feral hogs, (b) season: December 18, 19, 20, 1981, (c) bag limit: deer—one deer, hog—no limit, (d) sex: deer—bucks only, must have visible antlers, hogs—either sex, (e) permits: limited to 400. (3) Conventional weapon hunt: (a) species permitted: deer and feral hogs, (b) season: December 4, 5, 6, 1981, (c) bag limit: deer—one deer, hogs—no limit, (d) sex: deer—bucks only, hogs—either sex. (e) weapons: State regulations except no buckshot or handguns permitted. Shotgun slugs are permitted, (f) permits: limited to 400.

(4) The following special regulations are applicable to all three refuge-administered hunts. Stand hours will be in effect (½ hour before sunrise until 9 a.m.). All hunters will be required to wear at least 500 square inches of daylight fluorescent orange while not on a stand.

St. Vincent National Wildlife Refuge

(1) Archery hunts: (a) species permitted: white-tailed deer, bearded turkey and feral hogs, (b) season: November 19–21, 1981, (c) bag limit: deer—one deer, one turkey, hogs no limit, (d) sex: either sex except bearded turkey only, (e) permits: Maximum of 450. (2) Primitive weapons hunts: (a) species permitted: white-tailed deer, turkey, and feral hogs, (b) season: December 16–18, 1981, (c) bag limit: deer—one deer, turkey—one bearded turkey, hogs—no limit, (d) sex: deer and hogs—either sex; turkeys—bearded only, (e) permits: maximum of 300, (f) one single-shot side arm permitted. (3) All participants are required to check in and out at check stations. (4) Hunter camping and fires are restricted to two designated camping areas. (5) Hunters are required to wear an outer garment above the waist which contains a minimum of 500 square inches of daylight fluorescent orange material.

Georgia and South Carolina

Savannah National Wildlife Refuge

(1)(a) Species permitted: Feral hogs, (b) season: March 1–6, 1982, (c) bag limit: no limit, (d) sex: either sex, (e) weapons: shotgun—"00" buckshot, (f) permits: no quota.

Georgia

Blackbeard Island National Wildlife Refuge

(1) Archery hunts: (a) species permitted: deer, (b) season: November 2, 3, 4, 1981 and December 28–30, 1981, (c) bag limit: two deer, (d) sex: either sex, (e) permits: a maximum of 600 for each hunt. (2) Camping and fires are permitted at designated camping areas only. (3) During the periods from one-half hour before sunrise until 9 a.m. and from 3:30 p.m. until sunset each day, hunters must remain on their stands.

Harris Neck National Wildlife Refuge

(1) Gun Hunt: (a) species permitted: deer, (b) weapons: shotgun—slugs only, (c) season: January 8, 1982, (d) bag limit: two deer—antlerless only, (e) permits: maximum of 100 issued by public drawing. (2) During the period from one-half hour before sunrise until 9 a.m. and from 3:30 p.m. until sunset hunters must remain on their stands.

Okefenokee National Wildlife Refuge

(1) Archery and shotgun hunts (Cowhouse Island Unit): (a) species permitted: deer, (b) season: Archery—Thursdays, Fridays and Saturdays through October 23, 1981; Shotgun—Saturday, October 31, 1981, (c) bag limit: one deer of either sex, (d) permits: archery—no quota; shotgun—50 only; persons using the hunt area must check in and out at the entrance. (3) No one may enter the hunt area prior to two hours before sunrise and all hunters must clear the area by one hour after sunset.

(2) Shotgun hunts (Suwannee Canal Recreation Area and the Pocket Unit): (a) species permitted: deer, (b) season: Suwannee Canal—October 27 through November 12, 1981, Pocket Unit—November 10 through November 19, 1981; only on Tuesdays, Wednesdays, and Thursdays at both locations, (c) bag limit: one deer—antlerless, (d) permits: Suwannee Canal—225 only, Pocket Unit—180 only, (e) hunters must use assigned stand areas only, (f) only 70 antlerless deer will be taken from Suwannee Canal and 30 antlerless deer

from the Pocket Unit; once the quota is reached, the hunt will be terminated.

(3) Special regulations which apply to all Okefenokee refuge hunt areas: (a) all hunters must stay on stands from one-half hour before sunrise until 9:30 a.m. at all four hunts and from 5:30 p.m. until sunset at the Cowhouse Island hunt, (b) weapons other than shotguns with buckshot or rifled slugs are not allowed at the shotgun hunts.

Piedmont National Wildlife Refuge

(1) Archery hunts: (a) species permitted: deer, (b) season: October 3–11, 1981, (c) bag limit: two deer—either sex, (d) permits: no limit, (2) Muzzleloading firearms hunt: (a) species permitted: deer, (b) season: October 22–24, 1981, (c) bag limit: two deer—3 points or more on one side or antlerless, (d) permits: 1,500 permits issued by public drawing. (3) Bucks only gun hunts: (a) season: October 29–31, 1981, (b) bag limit: two bucks, with visible antlers, (c) permits: 1,500 permits issued by public drawing on August 31, 1981 at 1 p.m. (4) Either sex gun hunt: (a) seasons: November 7, November 21 and December 5, 1981, (b) permits: 1,500 for each hunt, (c) bag limit: two deer. (5) Camping is permitted only in the Pippins Lake Campground, Compartment 19. (6) Refuge big game hunters are required to wear outer garment above the waist which contains a minimum of 500 square inches of daylight fluorescent orange material. (7) Handguns and buckshot are prohibited on the refuge.

Wassaw Island National Wildlife Refuge

Special Conditions: (1) Archery hunts: (a) species permitted: deer, (b) season: November 13–15, 1981, (c) bag limit: two deer, (d) sex: either sex, (e) permits: maximum of 400. (2) Gun hunts: (a) species permitted: deer, (b) weapons: State regulations (except buckshot and handguns prohibited), (c) seasons: December 11 and 12, 1981, (d) bag limit: two deer, (e) sex: two antlerless or one buck and one antlerless on December 11, 1981, either sex on December 12, 1981, (f) permits: 120. (3) All camping and fires will be at designated camping areas only. (4) Stand hours: during the periods from one-half hour before sunrise until 9 a.m. and from 3:30 p.m. until sunset each day, hunters must remain on their stands.

South Carolina

Pinckney Island National Wildlife Refuge

(1) Gun hunts: (a) species permitted: deer, (b) weapons: shotguns with slugs, (c) season: October 10, 1981 and October 23, 1981, (d) bag limit: two deer, (e) sex: two antlerless or one buck and one antlerless, (f) permits: 80 for each hunt. (2) Participants must check in at headquarters between 4 a.m. and 5 a.m. and park in designated area prior to hunting. Entry by boat is prohibited. (3) During the periods from one-half hour before sunrise until 9 a.m. and from 3:30 p.m. until one-half hour after sunset, hunters must be on their stands.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally and which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28143 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 32

National Wildlife Refuges in Florida, Georgia, and South Carolina; Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special Regulations.

SUMMARY: It has been determined that the opening to hunting to certain national wildlife refuges in Florida, Georgia and South Carolina is compatible with the objectives for which the areas were established, will utilize a renewable natural resource and will provide additional recreational opportunity to the public. This document establishes special regulations effective for the upcoming hunting seasons for certain migratory game birds.

DATES: September 29, 1981 to June 30, 1982.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate refuge manager at the address or telephone number listed below:

Donald J. Hankla, Area Manager, U.S. Fish and Wildlife Service, 15 North Laura Street, Jacksonville, Florida 32202, telephone (904) 791–2267.

Edward Collinsworth, Refuge Manager, Chassahowitzka National Wildlife Refuge, Route 2, Box 44, Homosassa, Florida 32646, telephone (904) 382–2201.

Burkett S. Neely, Jr., Refuge Manager, Loxahatchee National Wildlife Refuge, Route 1, Box 278, Boynton Beach, Florida 33437, telephone (305) 732–3684.

Stephen R. Vehrs, Refuge Manager, Merritt Island National Wildlife Refuge, P.O. Box 6504, Titusville, Florida 32780, telephone (305) 867–4820.

John P. Davis, Refuge Manager, Savannah National Wildlife Refuge Complex, P.O. Box 8487, Savannah, Georgia 31412, telephone (912) 944–4321.

SUPPLEMENTARY INFORMATION: The author of this document is Howard Poitevint, Jacksonville Area Office, U.S. Fish and Wildlife Service, 15 N. Laura Street, Jacksonville, Florida 32202, telephone (904) 791–2267.

General Conditions

1. Hunting is permitted on national wildlife refuges indicated below in accordance with 50 CFR Part 32, State regulations and the following applicable general conditions and special regulations:

The Refuge Recreational Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires: (a) that no area of the National Wildlife Refuge System is used for forms of recreation not directly related to the primary purposes for which the area was established, and (b) that funds are available for the development, operation and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which Chassahowitzka, Loxahatchee, Merritt Island and Savannah National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Because of the time limitation involved to coordinate the state and federal hunting regulations, and because of the rapid approach of the hunting seasons, the USDI has concluded that "good cause" exists within the meaning of 5 U.S.C. 553(d) (3) of the Administrative Procedure Act to expedite the implementation of these special regulations. Therefore, the effective date is September 29, 1981.

Note.—The Department of the Interior has determined that this document is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193) and that the

rulemaking would not have a "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act and 43 CFR Part 14.

2. All hunters must posses a refuge permit to hunt on a national wildlife refuge. Permits are available from the refuge headquarters and/or check stations. Permits must be carried while hunting and are nontransferable.

3. Under the provisions of 50 CFR 26.32 additional regulations may apply. Contact the refuge manager for further information.

4. Ingress and egress points for motor vehicles and/or boats are limited to designated check stations or other specified areas.

5. Only steel shot ammunition may be used during refuge migratory waterfowl hunts. Possession of lead or other toxic shot in any gauge is prohibited during such hunts.

6. Only temporary blinds are permitted.

7. Personal property must be retrieved by owner and removed from the refuge daily, unless otherwise specified.

8. Portions of refuges open for hunts will be closed to other public use activities during these hunts.

§ 32.12 Special regulations; migratory game bird hunting for individual wildlife refuge areas.

Migratory bird hunting is permitted on the following refuges only within those areas posted with signs and/or designated on a hunting area map. Migratory bird hunting shall be in accordance with the aforementioned general conditions and the following special conditions:

Florida

Chassahowitzka National Wildlife Refuge

(1) Only ducks and coots may be hunted. (2) Hunting will be permitted daily during the State waterfowl season. (3) Travel to and from the hunting area will be permitted only by outboard motorboat or manually propelled boats and canoes. Air thrust boats are prohibited. (4) Dogs are permitted for retrieving dead and wounded game.

Loxahatchee National Wildlife Refuge

(1) Only ducks and coots may be hunted. (2) Hunting is permitted on Sundays, Wednesdays, Thursdays, Fridays, and Saturdays during the State waterfowl season. (3) Air thrust boats may be launched at the headquarters landing only. (4) All air thrust boat operators must possess a refuge airboat permit available at refuge headquarters. (5) Hunters must use the designated routes of travel to and from the hunting area.

Merritt Island National Wildlife Refuge

(1) Migratory waterfowl hunting is permitted for ducks and coots only. (2) Hunting is permitted only on Wednesdays, Thursdays, Fridays, and Saturdays from one-half hour before sunrise until 1 p.m. and on Sunday from one-half hour before sunrise until sunset during the State waterfowl season. (3) Proof of completion of a certified hunter safety training course must be carried in the field and is required to hunt Areas 1, 2 and 4 during the entire season. (4) A hunter check station is currently scheduled to be operated the first day of the season for issuance of daily permits. (5) Portions of the refuge may be closed to hunting at certain times during space shuttle operations. (6) Hunting from or within 10 feet of any dike, roadway or railroad fill is prohibited. (7) All boaters must wear life jackets when boats are in motion in the Indian River and Mosquito Lagoon. Air thrust boats are prohibited.

Georgia

Savannah National Wildlife Refuge

(1) (a) Only ducks, coots and snipe may be hunted. (b) Permits required. No limit. (2) Hunting will be permitted only on Thursdays, Fridays and Saturdays from one-half hour before sunrise to 12 noon during the State waterfowl season.

Note.—Snipe season opens at different dates than duck and coot season but will close on the same date.

(3) Hunting will not be permitted in or on Middle River; Back River; the channels of the Savannah River known as Steamboat River and Houstown Cut, between Front and Middle Rivers; nor within 50 yards of the shoreline of these rivers. (4) Hunters will not be permitted to enter the hunting area sooner than one and one-half hours before sunrise.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally and which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28141 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 32

Certain National Wildlife Refuges in Oklahoma and Texas; Hunting

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to hunting of certain National Wildlife Refuges in the States of Oklahoma and Texas is compatible with the objectives for which these areas were established, will utilize a renewable national resource, and will provide additional recreational opportunity to the public. This document establishes special regulations effective for the upcoming hunting season for hunting waterfowl, snipe and woodcock.

EFFECTIVE DATE: September 29, 1981.

FOR FURTHER INFORMATION CONTACT: The Refuge Manager at the address and/or telephone number listed below in the body of these Special Regulations.

SUPPLEMENTARY INFORMATION: The author of this document is W. Ellis Klett, Area Manager, Austin Area Office, U.S. Fish and Wildlife Service, 300 E. 8th Street, Room G–121, Austin, Texas 78701, 512–397–5434.

Hunting is permitted on the National Wildlife Refuges indicated below in accordance with applicable State and Federal regulations, subject to additional Special Regulations and conditions as indicated. The possession of lead shot is prohibited and non-toxic shot (steel) will be required for waterfowl hunting on the following national wildlife refuges: Anahuac, Aransas (Matagorda Island Unit), Brazoria, McFaddin, San Bernard and Sea Rim in Texas and Sequoyah in Oklahoma. Portions of the refuges which are open to hunting are designated by signs and/or delineated on maps. Special conditions applying to individual refuges are listed on leaflets available at refuge headquarters and from the Area Manager, U.S. Fish and Wildlife Service, 300 E. 8th Street, Room G–121, Austin, Texas 78701.

The Refuge Recreation Act of 1962 (16 U.S.C. 460K) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the areas were established, and (2) that funds are available for the development,

operation, and maintenance of the permitted forms of recreation. The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Note.—The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193), and that the rulemaking would not have "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (Pub. L. 96–354) and 43 CFR Part 14.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Oklahoma

Sequoyah National Wildlife Refuge, John R. Akin, Refuge Manager, Route 1, Box 18A, Vian, Oklahoma 74962, (918)–773–5251. Migratory game birds. Special Conditions: (1) Hunting of ducks, geese, coots, snipe, woodcock and crow is in accordance with the Oklahoma State season for migratory birds. (2) Firearms of any kind are prohibited in areas not posted as open to public hunting, except the Kerr-McClellan Navigation Channel, where firearms must be cased or broken down. (3) Camping or possession of firearms on the refuge at night is prohibited.

Tishomingo National Wildlife Refuge, Larry M. Ivy, Refuge Manager, P.O. Box 248, Tishomingo, Oklahoma 73460, (405)–371–2402. Migratory game birds. Special Conditions: (1) Public hunting of ducks and coots is permitted on Tishomingo Wildlife Management Area of the Tishomingo National Wildlife Refuge, Oklahoma: (2) Geese, ducks and coots may be hunted from one-half hour before sunrise until 11:45 a.m. on Thursdays, Saturdays and Sundays, and from 1:00 p.m. until sunset on Tuesdays, except that hunting is not permitted on Thanksgiving nor Christmas Days. (3) All hunters, upon entering or leaving the area, shall report at designated check stations as may be established for this purpose. (4) Ducks and coots may be hunted only in zone 1. Retrievers or boats must be used in zone 1 to prevent undue loss of downed birds in deep water. Temporary blinds may be constructed and placed where desired after giving due consideration to safety and hunting opportunities to other hunters already in the area. No more than 25 shells may be used by or in the possession of any hunter. (5) Geese may be hunted only in zone 2 and from the goose blinds provided. Each hunter will select the blind he wishes to use, and the order in which hunters make their selections will be determined by a daily drawing. Hunters may leave their assigned blinds to pick up decoys and return to the check station only at designated times, except that the hunters may leave blinds to place or adjust decoys and to retrieve downed birds. No more than 6 shotgun shells may be used by or in the possession of any hunter; shot size may not exceed BB's. (6) As requested, hunters must provide information relating to their hunts and permit collection of tissues from their harvested birds.

Texas

Anahuac National Wildlife Refuge, Russel W. Clapper, Refuge Manager, P.O. Box 278, Anahuac, Texas 77514, (713) 267–3337. Migratory game birds. Special Conditions: (1) Hunting hours will be from one-half hour before sunrise until 12 o'clock noon each day of the hunt. (2) Access to the hunting unit is by boat only. All boats must be equipped with properly working running lights and life preservers in compliance with Texas Water Safety Act. Hunters are not permitted to use refuge roads for access to the hunting area. (3) Marsh buggies, airboats, and all-terrain vehicles are not allowed within the hunting unit. (4) Pits may not be dug and permanent blinds may not be constructed. (5) Each hunter must maintain a safe distance of 300 feet from other hunters.

Matagorda Island Unit, Aransas National Wildlife Refuge, E. Frank Johnson, Refuge Manager, P.O. Box 68, Austwell, Texas 77950, (512) 286–3559. Migratory game birds. Special Conditions: (1) Unless otherwise specified, all laws and regulations published by the Texas Parks and Wildlife Department concerning waterfowl hunting will be applicable. (2) Taking of snow geese will not be permitted on the refuge. (3) Hunting hours: one-half (½) hour before sunrise until 12 o'clock noon. (4) The area will be open 3 days a week (Saturday, Sunday and Wednesday) during the regular State *duck* season. Refuge transportation on the island will be provided to and from the Matagorda Island dock and the hunt area. Hunters will receive a short briefing covering hunter behavior, bird identification with special emphasis on the peregrine falcon and other endangered species, and refuge management on the island prior to the hunt. Hunters must be at the Island docks by 5:00 a.m., at which time a drawing will be held for blind selection. (5) In the event whooping cranes begin using habitat within the hunt area, all or portions of that area will be closed to hunting.

Brazoria National Wildlife Refuge, Ronald G. Bisbee, Refuge Manager, P.O. Box 1088, Angleton, Texas 77515, (713) 849–6062. Migratory game birds. Special Conditions: (1) Access to the hunting areas must be entirely over public water routes. Travel across the refuge mainland to and from the area open to hunting is not permitted. Areas open to hunting are designated on maps which are available from the refuge manager at the above address. (2) Pits may not be dug and permanent blinds may not be constructed. Hunters may not have possessory rights to any blind. Temporary blinds may be made of native dead vegetation. Any materials brought onto the refuge for blind construction must be removed at the end of each hunt. (3) Alcoholic beverages are prohibited in all public hunt areas on the refuge. (4) The refuge waterfowl season is in accordance with Texas State waterfowl season.

McFaddin National Wildlife Refuge, Russel W. Clapper, Refuge Manager, P.O. Box 278, Anahuac, Texas 77514, (713) 267–3337. Migratory game birds. Special Conditions: (1) The McFaddin Marsh will be open to hunting on Sunday, Tuesday, Thursday and Saturday of the early teal and regular duck season as established by the State of Texas. The refuge will not be open during the goose only seasons or on Christmas Day. (2) Hunting hours are one-half hour before sunrise until 12:00 o'clock noon daily. (3) Any boat is allowed, except airboats may not have an engine of more than 10 horsepower. All boats must be equipped with properly working running lights and life preservers in compliance with Texas Water Safety Act. (4) No marsh buggies, or all-terrain vehicles permitted in the refuge marsh. (5) Pits may not be dug and permanent blinds may not be constructed. (6) No hunting is allowed within 300 feet of other hunters, roads, highways or buildings. (7) Hunters 16 years of age or younger must be accompanied by an adult 21 years of age or older who shall be responsible for the conduct of the minor. (8) McFadden Marsh is open to public foot and boat access at all times. (9) Refuge roads are open to public vehicle access from 7:30 a.m. until 4:00 p.m. Monday through Friday and other times as posted by signs and leaflets. Any portions of the

refuge may be closed periodically because of public or wildlife hazards. (10) Overnight camping is permitted only adjacent to the Gulf of Mexico beach. Camping is limited to three days and three nights.

San Bernard National Wildlife Refuge, Ronald G. Bisbee, Refuge Manager, P.O. Box 1088, Angleton, Texas 77515, (713) 849–6062. Migratory game birds. Special Conditions: (1) The waterfowl hunting area on this refuge is divided into two parts: Special Permit Waterfowl Hunting area (SPWH area) and Free Waterfowl Hunting area (also locally known as the Cedar Lakes and the Smith Marsh tract). These areas are designated on maps available from the refuge manager at the above address. (2) A refuge permit will be required for participation in the SPWH area. Permit applications are available at the Refuge office, 1208 North Velasco Street, Angleton, Texas, and must be returned to the refuge office by October 15, 1980 to be eligible for drawing for advanced reservations. (3) The refuge waterfowl season is in accordance with the Texas State waterfowl season. (4) Hunters participating in the Special Permit Waterfowl Hunt are required to be present at the check station by 4:30 a.m. for the first portion of the split season and 5:00 a.m. for the second portion. (5) The refuge will furnish duck decoys for the Special Permit Waterfowl Hunt and no other duck decoys may be used in this segment of the hunt. Goose decoys are permitted but will not be furnished. (6) Hunters participating in the Special Permit Waterfowl Hunt may not leave their blinds except to retrieve dead or wounded waterfowl or to rearrange their decoys. (7) Hunting days for the SPWH area will be Saturdays, Mondays and Wednesdays. (8) Hunters will stop hunting and shooting at 10:00 a.m., local time, in the SPWH area and return to a hunt check station to fill out a hunter questionnaire. (9) Any available hunting blinds in the SPWH area will be filled by hunters without reservations on a standby basis immediately prior to each day's hunt. (10) A "special hunter service recreation fee" of $3 will be collected from each hunter for each hunting trip on the SPWH area. Holders of "Golden Age Passports" will be charged $1.50. (11) Hunters will be required to walk through marsh terrain to assigned blinds from designated parking areas. (12) In the SPWH area, guns may not be loaded until hunters reach their assigned blinds. (13) No guest or observers are permitted in the blinds. (14) Access to the Free Waterfowl Hunting areas (Cedar Lakes and Smith Marsh tract) must be primarily over public water routes. (15) On the Free Waterfowl Hunting areas, pits may not be dug and permanent blinds may not be constructed. Hunters may not have possessory rights to any blind. Temporary blinds may be made of native dead vegetation. Any materials brought on to the refuge for blind construction must be removed at the end of each hunt. (16) Birds may not be plucked on the refuge. (17) Alcoholic beverages and controlled drugs are prohibited in all hunt areas on the refuge.

Sea Rim National Wildlife Refuge, Russel W. Clapper, Refuge Manager, P.O. Box 278, Anahuac, Texas 77514, (713) 267–3337. Migratory game birds. Special Conditions: (1) The Sea Rim National Wildlife Refuge will be open to hunting Monday, Wednesday, and Saturday of the duck season as established by the State of Texas. The refuge will not be open during the goose only seasons or on Christmas day. (2) Hunting hours will be from one-half hour before sunrise until 12 o'clock noon each day of the hunt. No firearms are permitted on the refuge prior to 3:00 a.m. or after 1:00 p.m. daily. (3) No hunting will be permitted closer than 300 feet of other hunters, roads, highways or buildings. (4) Pits may not be dug and permanent blinds may not be constructed. (5) Access to the refuge is by foot or by outboard or inboard powered boats, canoes, mudboats or skiffs, and by airboats with engines of 10 horsepower or less. All boats must be equipped with properly working running lights and life preservers in compliance with Texas Water Safety Act. (6) No marsh buggies or all-terrain vehicles permitted in the refuge marsh or grasslands. (7) Hunters 16 years of age or younger must be accompanied by an adult hunter 21 years of age or older who shall be responsible for the conduct of the minor.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28144 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 32

Certain National Wildlife Refuges in Oklahoma and Texas; Hunting

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to hunting of certain National Wildlife Refuges in the States of Oklahoma and Texas is compatible with the objectives for which these areas were established, will utilize a renewable national resource, and will provide additional recreational opportunity to the public. This document establishes special regulations effective for the upcoming hunting season for mourning doves and teal ducks.

EFFECTIVE DATE: September 29, 1981.

FOR FURTHER INFORMATION CONTACT: The Refuge Manager at the address and/or telephone number listed below in the body of these Special Regulations.

SUPPLEMENTARY INFORMATION: The author of this document is W. Ellis Klett, Area Manager, Austin Area Office, U.S. Fish and Wildlife Service, 300 E. 8th Street, Room G–121, Austin, Texas 78701, 512–397–5434.

Hunting is permitted on the National Wildlife Refuges indicated below in accordance with applicable State and Federal regulations, subject to additional Special Regulations and conditions as indicated. The possession of lead shot is prohibited and non-toxic shot (steel) will be required for waterfowl hunting on the following national wildlife refuges: Anahuac, Aransas (Matagorda Island Unit), Brazoria, McFaddin, San Bernard and Sea Rim in Texas and Sequoyah in Oklahoma. Portions of the refuges which are open to hunting are designated by signs and/or delineated on maps. Special conditions applying to individual refuges are listed on leaflets available at refuge headquarters and from the Area Manager, U.S. Fish and Wildlife Service, 300 E. 8th Street, Room G–121, Austin, Texas 78701.

The Refuge Recreation Act of 1962 (16 U.S.C. 460K) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the areas were established, and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation. The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife

Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Note.—The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193), and that the rulemaking would not have "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (Pub. L. 96-354) and 43 CFR Part 14.

§ 32.32 Special regulations; migratory game birds; for individual wildlife refuge areas.

Oklahoma

Sequoyah National Wildlife Refuge, John R. Akin, Refuge Manager, Rt. 1, Box 18A, Oklahoma 74962, 918-773-5251. Mourning doves and teal ducks. Special Conditions: (1) Firearms of any kind are prohibited in areas not posted as open to public hunting, except the Kerr-McClellan Navigation Channel where firearms must be cased or broken down. (2) Only longbow and arrow or shotguns without slug ammunition are permitted. (3) Camping or possession of firearms on the refuge at night is prohibited. (4) All vehicles must be parked in designated parking areas as shown on maps available at refuge headquarters and at leaflet boxes throughout the public hunting area.

Tishomingo National Wildlife Refuge, Larry M. Ivy, Refuge Manager, P.O. Box 248, Tishomingo, Oklahoma 73460, 405-371-2402. Mourning doves and teal ducks. Special Conditions: (1) The areas to be hunted is the Tishomingo Wildlife Management Area. (2) Up to two (2) dogs per hunter may be used for the purpose of hunting and retrieving game. (3) Hunters, upon entering and leaving the hunting area, shall report at designated checking stations as may be established for the regulation of the hunt and shall furnish upon request information pertaining to their hunting activities. (4) Duck hunters, during the Special Early Teal Season, who hunt the following areas are required to use a boat or hunt with a retrieving dog as otherwise water depths would prevent adequate retrieval of downed birds: McAdams Pond, Teller Pond, Whiskey Creek Pond, Muel Lake, Reeves Ravine, Lost Lake and Bobcat Gulch.

Texas

Anahuac National Wildlife Refuge, Russel W. Clapper, Refuge Manager, P.O. Box 278, Anahuac, Texas 77514, 713-267-3337. Teal Duck. Special Conditions: (1) Open season will be each day of the special early teal season as established in the State of Texas. (2) Hunting hours will be from one-half hour before sunrise until 12 o'clock noon each day of the hunt. (3) Access to the hunting unit is by boat only. All boats must be equipped with properly working running lights and life preservers in compliance with the Texas Water Safety Act. Hunters are not permitted to use refuge roads for access to the hunting area. (4) Marsh buggies, airboats, and all-terrain vehicles are not allowed within the hunting unit. (5) Each hunter must maintain a safe distance of 300 feet from other hunters.

Brazoria National Wildlife Refuge, Ronald G. Bisbee, Refuge Manager, Box 1088, Angleton, TX 77515, 713-849-6062. Early teal ducks. Special Conditions: (1) Access to the hunting areas must be entirely over public water routes. Travel across the refuge mainland to and from the area open to hunting is not permitted. Areas open to hunting are designated on maps which are available from the refuge manager at the above address. (2) Pits may not be dug and permanent blinds may not be constructed. Hunters may not have possessory rights to any blind. Temporary blinds may be made of native dead vegetatation. Any materials brought onto the refuge for blind construction must be removed at the end of each hunt. (3) Alcoholic beverages are prohibited in all public hunt areas on the refuge. (4) The refuge early teal season is in accordance with the Texas state early teal season.

Hagerman National Wildlife Refuge, James M. Williams, Refuge Manager, Route 3, Box 123, Sherman, Texas 75090, 214-786-2826. Mourning dove. Special Conditions: (1) The open season for hunting mourning doves on the refuge is restricted to the first four weeks of the State season for the North Zone. (2) Up to two (2) dogs per hunter may be used for the purpose of hunting and retrieving. (3) Entrance into closed areas by hunters or dogs for retrieving of game or for any other reason is prohibited.

Matagorda Island Unit, Aransas National Wildlife Refuge, E. Frank Johnson, Refuge Manager, P.O. Box 68, Austwell, Texas 77950, 512-286-3559. Mourning Dove. Special Conditions: (1) Open season for hunting mourning dove on the Matagorda Island will extend from October 3, 1981 through October 30, 1981, inclusive. (2) All portions of Matagorda Island under federal ownership or control will be open to dove hunting with the exception of the old Air Force base itself which is fenced off. (3) Hunters may be transported to specific hunt areas at the discretion of the refuge manager or his appointed representative, depending on the work load at the time. (4) All hunters arriving at the Island docks must register with the refuge personnel prior to the hunt.

McFaddin National Wildlife Refuge, Russel W. Clapper, Refuge Manager, P.O. Box 278, Anahuac, Texas 77514, 713-267-337. Teal Duck. Special Conditions: (1) The McFaddin Marsh will be open to hunting on Sunday, Tuesday, Thursday and Saturday of the special early teal season. (2) No firearms are permitted on the refuge prior to 3:00 a.m. or after 1:00 p.m. daily. (3) Hours are one-half hour before sunrise until 12:00 o'clock noon daily. (4) Any boat is allowed, except airboats may not have an engine of more than 10 horsepower. All boats must be equipped with properly running lights and life preservers in compliance with Texas Water Safety Act. (5) No marsh buggies or all-terrain vehicles permitted in the refuge marsh or grasslands. (6) No hunting is allowed within 300 feet of other hunters, roads, highways or buildings. (7) Hunters 16 years of age or younger must be accompanied by an adult 21 years of age or older who shall be responsible for the conduct of the minor.

San Bernard National Wildlife Refuge, Ronald G. Bisbee, Refuge Manager, P.O. Box 1088, Angleton, Texas 77515, 713-849-6062. Teal Duck. Special Conditions: (1) Only the free waterfowl hunting areas known locally as the Cedar Lakes and the Smith Marsh are open to the hunting of teal ducks during this early season. These areas are designated on maps available from the refuge manager at the above address. (2) Pits may not be dug and permanent blinds may not be constructed. Hunters may not have possessory rights to any blind. Temporary blinds may be made of native dead vegetation. Any materials brought onto the refuge for blind construction must be removed at the end of each hunt. (3) Alcoholic beverages are prohibited in all public hunt areas on the refuge. (4) The refuge early teal season is in accordance with the Texas state early teal season.

Sea Rim National Wildlife Refuge, Russel W. Clapper, Refuge Manager, P.O. Box 278, Anahuac, Texas 77514, 713-267-3337. Teal Duck. Special Conditions: (1) Sea Rim National Wildlife Refuge will be open to hunting on Monday, Wednesday, and Saturday of the special early teal season. (2) Hunting hours will be from one-half hour before sunrise until 12:00 o'clock noon each day of the hunt. No firearms are permitted on the refuge prior to 3:00 a.m. or after 1:00 p.m. daily. (3) No hunting will be permitted closer than 300 feet of other hunters, roads, highways or

buildings. (4) Access to the refuge is by foot or by outboard or inboard powered boats, canoes, mudboats or skiffs, and by airboats with engines of 10 horsepower or less. All boats must be equipped with properly working running lights and life presevers in compliance with Texas Water Safety Act. (5) No marsh buggies or all-terrain vehicles permitted in the refuge marsh or grasslands. (6) Hunters 16 years of age or younger must be accompanied by an adult 21 years of age or older who shall be responsible for the conduct of the minor.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28142 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 32

National Wildlife Refuges in Delaware; Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: It has been determined that the opening to hunting of certain National Wildlife Refuges is compatible with the objective for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. These special regulations describe the conditions under which hunting will be permitted on portions of certain National Wildlife Refuges in Delaware.

EFFECTIVE DATES: September 29, 1981 through February 28, 1982.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the following addresses or telephone numbers:

John Green, Area Manager, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401, 301-269-6324.

Don Perkuchin, Refuge Manager, Bombay Hook National Wildlife Refuge, RD #1, Box 147, Smyrna, Delaware 19977, 302-653-9345.

George O'Shea, Assistant Refuge Manager, Prime Hook National Wildlife Refuge, RD #1, Box 195, Milton, Delaware 19968, 302-684-8419, under administration of Bombay Hook National Wildlife Refuge.

SUPPLEMENTARY INFORMATION: The author of this document is Edward S. Moses, Refuges and Wildlife Resources, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158, 617-965-5100, X-222.

Hunting on portions of the following refuges shall be in accordance with applicable State and Federal seasons and regulations, subject to additional special regulations and conditions indicated. Portions of refuges which are open to hunting are designated by signs and/or shown on maps. Under the provisions of 50 CFR 26.32, additional regulations may apply. Contact the Refuge Manager for further information. Special conditions applying to individual refuges and maps are available at Refuge Headquarters or from the office of the Area Manager.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires: (1) That any recreational use permitted will not interfere with the primary purpose for which the area was established, and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation. The recreational use authorized by these regulations will not interfere with the primary purposes for which the following National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Because of the time limitation involved to coordinate the State and Federal hunting regulations and because of the rapid approach of the hunting seasons, the U.S. Department of the Interior has concluded that "good cause" exists within the meaning of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act to expedite the implementation of these special regulations. Effective date is September 1, 1981.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Bombay Hook National Wildlife Refuge

Public hunting of ducks, geese, and coots is permitted on areas designated by signs as open to hunting including the South Waterfowl Hunting Area, the West Waterfowl Hunting Area, the Young Waterfowlers Area, and the South Upland Hunting Area.

Hunting shall be in accordance with all State and Federal regulations covering the hunting of ducks, geese, and coots, subject to the following special conditions:

(1) Hunting is permitted on the West Waterfowl Hunting Area from one-half hour before sunrise to 12 noon local standard time, Tuesdays, Thursdays, and Saturdays (except November 7) during the goose season.

(2) Hunting in the South and West Waterfowl Areas and Young Waterfowlers Area shall be only from existing numbered blinds. The possession of an uncased gun or shooting while outside of a blind is prohibited on these areas except when in active pursuit of crippled waterfowl. In such cases the hunter may fire at only the crippled bird.

(3) Hunting is permitted in the South Waterfowl Hunting Area only on Monday, Wednesday, Friday, and Saturday, during the State duck season.

(4) The necessary permit to enter the South Waterfowl Hunting Area will be issued each hunting day by a ticket-lottery system at one and one-half hours before legal shooting time at the checking station at Port Mahon. Hunters arriving after the lottery will be issued permits on a first-come, first-served basis. Permits will be surrendered at the checking station within one-half hour after sunset. The permits for advance reservations will be cancelled if the holder is not present one hour prior to the start of legal shooting time on the date of his reservation. These forfeited permits and permits not reserved by advance reservation will be awarded to other hunters by lottery on the morning of the hunt. All hunters will check out through the headquarters checking station prior to leaving the refuge.

(5) Each hunting permittee using the West Waterfowl Hunting Area will pay a recreation fee of $10.00 prior to entrance into the hunting area. A recreation fee of $2.00 per hunter will be charged on the South Waterfowl Hunting Area prior to entrance into the hunting area. Non-ambulatory individuals using the Young Waterfowl Hunting Area will pay a recreation fee of $5.00 per blind prior to entrance into the hunting area.

(6) Not more than four persons may occupy a blind at any one time on the West Waterfowl Hunting Area nor more than three on the South Waterfowl Hunting Area.

(7) The Young Waterfowlers Area will be open from one-half hour before

sunrise to 12:00 noon local standard time on Saturdays and holidays to young hunters who present evidence of having completed the prescribed training program. Two youths, accompanied by an instructor who may not possess ammunition or possess or discharge a firearm, may use one blind. Two blinds within the Young Waterfowlers Area will also be utilized on Tuesdays by non-ambulatory individuals. These individuals will be selected in cooperation with the Delaware Division of Vocational Rehabilitation. Two hunters accompanied by an assistant who may not possess ammunition or possess or discharge a firearm, may use each blind.

(8) Waterfowl hunters on all four areas are required to use steel shotshells and may not have in their possession lead shotshells. No hunter may have in their possession or use in one day more than 12 shells on the West Waterfowl Hunting Area or 15 shells on the Young Waterfowlers Hunting Area.

(9) Hunters, when requested by Federal or State enforcement officers, must display for inspection all game, hunting equipment, and ammunition.

Public hunting of rails and gallinules, mourning doves, woodcock, crows, and common snipe on the 169 acre South Upland Hunting Area is permitted during the regular State seasons.

Prime Hook National Wildlife Refuge

Public hunting of ducks, geese, and coots, is permitted on the 1,180 acre Waterfowl Hunting Area. Hunting shall be in accordance with all Federal and State regulations covering the hunting of migratory game birds subject to the following special conditions:

(1) Permits will be issued by a lottery basis in accordance with State regulations. Hunters not selected in the lottery will be issued permits on a first-come, first-served basis until 3:00 p.m. Permits will be turned in at the checking station within one hour after sunset. When leaving a blind unoccupied for any reason the permit must be turned in and a new permit must be secured at the check station before hunting again.

(2) Hunting shall be only from blinds at locations designated by refuge personnel. The possession of an uncased gun or shooting while outside of a blind is prohibited except when in active pursuit of crippled waterfowl. In such cases the hunter may fire at only the crippled waterfowl. Three hunters per blind permitted.

(3) The area is open each Monday, Wednesday, Friday, and Saturday, throughout the duck hunting season, as well as Thursday, October 1, 1981.

(4) Access to the waterfowl hunting area will be at designated boat access points.

(5) Steel shotshells are required for all waterfowl hunters. No waterfowl hunters shall have in their possession lead shotshells.

(6) Hunters, when requested by Federal or State enforcement officers, must display for inspection all game, hunting equipment, and ammunition.

Public hunting of mourning doves, common snipe, and woodcock, is permitted only on the 2,185 acre North Hunting Area.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28134 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 32

National Wildlife Refuges in Delaware, Maryland, North Carolina and Virginia; Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: It has been determined that the opening to hunting of certain National Wildlife Refuges is compatible with the objective for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. These special regulations describe the conditions under which hunting will be permitted on portions of certain National Wildlife Refuges in Delaware, Maryland, North Carolina and Virginia.

EFFECTIVE DATES: September 29, 1981 through February 28, 1982.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the following addresses or telephone numbers:

John Green, Area Manager, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401, 301–269–6324.

Don Perkuchin, Refuge Manager, Bombay Hook National Wildlife Refuge, R.D. #1, Box 147, Smyrna, Delaware 19977, 302–653–9345.

George O'Shea, Assistant Refuge Manager, Prime Hook National Wildlife Refuge, R.D. #1, Box 195, Milton, Delaware 19968, 302–684–8419, under administration of Bombay Hook National Wildlife Refuge.

Philip Feiger, Refuge Manager, Eastern Neck National Wildlife Refuge, Route 2, Box 225, Rock Hall, Maryland 21661, 301–639–7056.

Allen Hundley, Assistant Refuge Manager, Mackay Island National Wildlife Refuge, P.O. Box 31, Knotts Island, North Carolina 27950, 919–429–3100, under administration of Back Bay National Wildlife Refuge.

Dennis Holland, Refuge Manager, Chincoteague National Wildlife Refuge, Box 62, Chincoteague, Virginia 23336, 804–336–6122.

Ralph M. Keel, Jr., Refuge Manager, Great Dismal Swamp National Wildlife Refuge, Box 349, Suffolk, Virginia 23434, 804–539–7479.

Harold Olsen, Refuge Manager, Presquile National Wildlife Refuge, Box 620, Hopewell, Virginia 23860, 804–458–7541.

SUPPLEMENTARY INFORMATION: The author of this document is Edward S. Moses, Refuges and Wildlife Resources, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158, 617–965–5100, X–222.

Hunting on portions of the following refuges shall be in accordance with applicable State and Federal seasons and regulations, subject to additional special regulations and conditions indicated. Portions of refuges which are open to hunting are designated by signs and/or shown on maps, under the provisions of 50 CFR 26.32, additional regulations may apply. Contact the Refuge Manager for further information. Special conditions applying to individual refuges and maps are available at Refuge Headquarters or from the office of the Area Manager.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires: (1) That any recreational use permitted will not interfere with the primary purpose for which the area was established, and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation. The recreational use authorized by these regulations will not interfere with the primary purposes for which the following National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement of the Operation of the National Wildlife Refuge System published in November

1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Because of the time limitation involved to coordinate the State and Federal hunting regulations and because of the rapid approach of the hunting seasons, the U.S. Department of the Interior has concluded that "good cause" exists within the meaning of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act to expedite the implementation of these special regulations. Effective date is September 1, 1981.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Delaware

Bombay Hook National Wildlife Refuge

Public hunting of upland game on the 169 acre South Upland Hunting Area is permitted during the regular State season.

Prime Hook National Wildlife Refuge

Public hunting of upland game is permitted only on the 2,185 acre North Hunting Area.

(1) Hunting hours will be from one-half hour before sunrise to one-half hour after sunset.

(2) Field possession of waterfowl or coots is prohibited on the North Hunting Area.

(3) Practice and target shooting is prohibited.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Delaware

Bombay Hook National Wildlife Refuge

Public hunting of deer is permitted only on designated areas.

(1) Season:

(a) Archery-Hunting by bow and arrow on the regular deer hunting area is permitted during five Saturdays of the season through October 3. Hunting by bow and arrow on the South Upland hunting area is permitted during the entire season.

(b) Shotgun-Hunting with shotguns on the regular deer hunting area is permitted only on November 6, 7, 9, and 11, 1981. Hunting with shotguns on the South Upland hunting area is permitted during the entire State season. Hunting with shotguns by non-ambulatory individuals on the special deer hunting area is permitted on the first Tuesday of the State season.

(c) Primitive Firearms-Hunting with primitive firearms on the regular deer hunting area is permitted on October 8, 9, and 10, 1981. Hunting with primitive firearms on the South Upland hunting area is permitted during the entire State season.

(2) Permit Requirements: All deer hunters, regardless of type of weapon, are required to obtain a daily permit prior to hunting on the regular deer hunting area. Daily permits are not required on the South Upland area. Procedures for obtaining daily permits are as follows:

(a) Archery-Permits are issued at the Dutch Neck Gate Refuge Entrance on a first-come, first-served basis one hour before shooting time on the days of the hunt. The maximum number of hunters admitted to the regular deer hunting area at any one time will be 80.

(b) Shotgun-Permits are selected by advance public lottery. Individuals who have been selected for advance reservation must appear at Refuge Headquarters prior to one hour before legal shooting time on the day of the hunt to be issued a permit. Failure to appear will result in forfeiture of the reservation. Forfeited permits and permits not reserved by advance reservations will be awarded to standby hunters by lottery one hour before the start of legal shooting time. The maximum number of hunters admitted to the regular deer hunting area at any one time will be 50.

Non-ambulatory shotgun hunters utilizing the regular deer hunting area on November 10, will be restricted to individuals as selected in cooperation with the Delaware Division of Vocational Rehabilitation. The maximum number of hunters admitted to the special deer hunting area at one time will be ten.

(c) Primitive Weapon-Permits are issued at the Dutch Neck Gate Refuge Entrance on a first-come, first-served basis one hour before shooting time on the days of the hunt. The maximum number of hunters admitted to the deer hunting area at any one time will be 50.

(3) No nailed deer stands, platforms, ladders or blinds permitted. Tree stands must be of portable, temporary design, and be completely removed after use.

(4) Target practice or the test firing of any weapon is not permitted.

Prime Hook National Wildlife Refuge

Public hunting of deer is permitted only on the 2,185 acre north hunting area. Hunting shall be in accordance with all State regulations.

Archery Hunt

(1) Seasonal permits are required for the north hunting area and will be issued at the refuge office Mondays through Fridays between 7:30 a.m. and 4:00 p.m. Permits may also be requested by mail. Those permits must be returned to the refuge office by the end of the deer hunting seasons.

(2) No nailed deer stands, platforms, ladders or blinds are permitted. Tree stands must be of portable, temporary design, and be completely removed after use.

Firearms Hunt

(1) Permits are required for all deer hunting. These permits are available free of charge and will be issued by mail to successful applicants selected by a pre-season drawing.

(2) The number of shotgun hunters admitted to the open area will be restricted to 25 preselected hunters per day.

(3) Permits must be returned to the refuge office within five days of the closure of the deer hunting season.

(4) No nailed deer stands, platforms, ladders or blinds are permitted. Tree stands must be of portable, temporary design, and be completely removed after use.

Maryland

Eastern Neck National Wildlife Refuge

Public hunting of white-tailed deer is permitted except on county roads, parking areas, and areas designated by signs as closed to hunting. Hunting shall be subject to the following special conditions:

(1) White-tailed deer may be taken from sunrise to sunset during the following open seasons:

Archery only: October 5, 6, 9, and 10, 1981
Non-Ambulatory hunters only, hunter choice of weapons: October 23, and 24, 1981
Muzzle-loading longarm only: October 26, 28, and 31, 1981
Shotgun only: November 16, 18, and 21, 1981

(2) Bag limits: One deer, either sex.

(3) All participants in the deer hunt must check in and out at the refuge check station before entering or leaving the refuge. All deer killed must be presented for examination at the refuge check station on the day killed.

(4) All hunters must be checked in by no later than 8:00 a.m. of the morning they are to hunt. Failure to do so will constitute a no show, and a standby hunter will be assigned.

No hunter may enter the refuge earlier than one-half hour before sunrise and must check out no later than one hour after sunset.

(5) Possession of loaded firearms, including arrows notched in bows, is not permitted on county blacktop roads, in parking areas, in or on vehicles, and before shooting hours.

(6) All hunters must enter and leave by way of State Road 445 only. Entry by boat is not permitted.

(7) During all refuge hunts, hunters must furnish and wear, so as to be readily noticeable, daylight fluorescent orange caps or hats and a minimum of 144 square inches of fluorescent orange material worn on the chest and on the back above the waistline.

(8) Hunters under 18 years of age must be accompanied by a hunting, permit-holding adult.

(9) Contained fire cooking devices will be permitted within fifty (50) feet of legally parked vehicles and in the Bogle's Wharf and Ingleside Recreation Areas.

(10) All hunters must exhibit their hunting equipment, Federal permit, Federal qualification certificate, State hunting license, and deer-turkey stamp to Federal or State officers on request.

(11) All firearms, ammunition, load sizes and arrows must be legal for the taking of deer in the State of Maryland, and the bows and firearms used to hunt must be the same as those used to qualify.

(12) All arrows in possession of archery hunters must have the hunter's full name and address legibly and permanently affixed with indelible ink, paint or etched into the arrow shaft.

(13) Use or possession of alcoholic beverages by hunters is not permitted during the hunt.

(14) A Federal hunt permit will be required of all participants in the deer hunts. Hunters will be limited to one hundred and fifteen (115) per day for gun hunts, and one hundred and fifty (150) per day for archery hunts, and twenty (20) for the non-ambulatory hunt (10 for non-ambulatory hunters and 10 for their helpers). All participants of the non-ambulatory hunt will be subject to State regulations governing such hunting.

(15) The permit must be returned to the refuge at check out or, in the case of persons unable to hunt on the day selected, the permit must be returned prior to December 31, 1981. Noncompliance with this and other regulations will subject hunter to regular penalties and, in addition, will be grounds for nonselection in future hunts.

(16) Hunters who have a valid refuge hunting permit will be allowed to scout the refuge from September 19 to November 20 on all non-hunt days. Hunters exercising this privilege will display their refuge permit on the dashboard of their car.

(17) Portable tree stands which cause no damage to trees are permitted and must be removed at the end of each hunt day.

North Carolina

Great Dismal Swamp National Wildlife Refuge

(See regulations under Virginia)

Mackay Island National Wildlife Refuge

Public hunting of white-tailed deer is permitted only on designated areas. Hunting shall be subject to the following special conditions:

(1) White-tailed deer may be taken during the following open seasons:

Archery hunt: either sex: October 2–3
Shotgun hunt: bucks only: November 20–21
Shotgun hunt: either sex: December 9–12

(2) Bag limits: one per day

(3) Weapons:

(a) Archery: long-bow, recurve, and compound bows. All arrows in possession of hunters must be permanently marked with hunter's name.

(b) Shotguns: shotguns must be 20 gauge or larger. Rifled slugs or buckshot may be used.

(4) A refuge hunt permit will be required of all participants. All hunters will be charged a $10.00 special recreation permit fee. Permits will be issued in advance of the season to hunters selected in a drawing to be held at the refuge office on Knotts Island. Permits are nontransferable and will be limited to 25 per day for the archery hunt and 20 per day for the shotgun hunts.

(5) All hunters will be assigned to designated stands on the morning of each day's hunt, with stand selection made by hunters in the order in which they were selected in the drawing. Two out of the total stands will be developed to accommodate non-ambulatory hunters and will be automatically assigned to such hunters if they are selected in the drawing. Gun hunters will be required to remain within 25 feet of their stands until they have completed hunting. Bow hunters must remain within 25 feet of their stands from sunrise to 10:00 a.m. after which they may hunt anywhere in the area open to hunting.

(6) All permitted hunters must check in at the refuge shop by two hours before sunrise for stand selection, collection of $10.00 fee, and hunt orientation. Available permits not filled by the drawing or resulting from failure of permittees to show up will be issued to standby hunters selected by a special drawing, with order of selection of remaining stands based on order of selection in this drawing.

(7) Transportation to the hunt area will be by refuge vehicle, except in the case of non-ambulatory permittees who will be allowed to take their own vehicles to the hunt area. Pick up trips will be made through the hunt area by refuge vehicle at 10:00 a.m., noon, 4:00 p.m., and 15 minutes after sunset. All hunters will be required to leave the hunt area no later than the last pick up each day.

(8) All hunters will be required to wear a minimum of 400 square inches of daylight fluorescent orange material on the head, chest, and back at all times.

(9) Scouting will be permitted on the hunt area during the period November, 9–15, 1981. During the scouting periods, no motorized vehicles will be permitted on Mackay Island Road beyond the gate located 1.6 miles west of State Route 615.

(10) Loaded firearms are permitted only while on assigned stands.

(11) Portable tree stands that cause no damage to trees will be permitted.

(12) All deer taken during the hunts are to be checked at the refuge shop. Crippled deer are to be reported to the refuge staff as soon as possible. Deer may be field dressed in the hunt area but not at the check station.

(13) Use or possession of alcoholic beverages by participants is prohibited during the hunt.

Virginia

Chincoteague National Wildlife Refuge

Public hunting of deer is by special permit only on designated areas. Hunting shall be subject to the following special conditions:

(1) Special Recreation Permits: All hunters must possess a $10.00 special recreation permit. By accepting the permit, hunters agree to submit their credentials, equipment and vehicles to inspection by authorized personnel. Violation of any regulation may be grounds for revocation of the permit and/or prosecution.

(2) Species to be taken: Sika and whitetail deer.

(3) Bag Limits: One per day of any species, age and sex; three per license year. If a hunter takes three deer, at least one deer must be an antlerless deer. In the firearms hunt, if two hunters use the same unit, the total aggregate limit is four deer.

(4) Season: The archery hunt will coincide with the State archery season. The firearms hunt will occur within the State season, but will be restricted as stated in hunter permits. All arrows in possession of archery hunters must have the hunter's full name and address legibly and permanently affixed with

indelible ink, paint, or etched into the arrow shaft.

(5) Hunting equipment: All forms of equipment authorized by State law are permitted. Except—shotguns must fire a single projectile and all firearms must be modified to hold only one round.

(6) Dogs are prohibited.

(7) Hunting hours: Same as State hunting hours. All hunters must be checked out of the hunting area within two hours after the close of legal hunting hours.

(8) Loaded firearms or nocked arrows are permitted only within designated hunt areas during hunt hours. Firearms in vehicles must be cased or disassembled. Shooting from or across roads that are open to vehicles is prohibited.

(9) All hunters under 18 years of age must be accompanied by an adult.

(10) Check Station: All hunters must sign in and out of the hunting area, enter and exit by designed route and check deer at the refuge check station.

(11) Protective Clothing: All persons in the hunt area are required to wear a minimum of 400 total square inches of a safety fluorescent colored material, distributed even by between the front and back surfaces.

(12) Shooting at wildlife other than deer is prohibited.

Great Dismal Swamp National Wildlife Refuge

Public hunting of deer is permitted only on designated areas shown on maps available at Refuge Headquarters. Hunting shall be in accordance with all State regulations subject to the following special conditions:

(1) Species to be taken: Whitetail deer.

(2) Bag Limits:

Virginia—one per day, either sex.
North Carolina—two per day, one must be antlerless.

(3) Season:

Virginia—October 17, 21, 24, 28, and 31, 1981
North Carolina—November 6, 7, 13, and 14, 1981

(4) Hunting equipment: Shotguns only, no smaller bore than 20 gauge, loaded with buckshot and/or rifled slugs. Bow—in Virginia only.

(5) Possession of other weapons or ammunition is prohibited.

(6) Dogs are prohibited.

(7) Hunting hours—same as State hunting hours. All hunters must be clear of hunting areas by two hours after the close of legal hunting hours.

(8) Possession of loaded firearms in or on a vehicle or shooting from a vehicle is prohibited.

(9) Possession of loaded firearms on a refuge road including rights-of-way or ditch banks is prohibited.

(10) Unauthorized entry outside the hunt area and driving motorized vehicles off designated roads is prohibited.

(11) Camping and fires on refuge are prohibited.

(12) All hunters under 18 years of age must be accompanied by an adult.

(13) All wounded deer will be reported to refuge personnel immediately. All deer taken on the area must be brought to the check station to be checked out. Jawbones may be removed by refuge personnel.

(14) Shooting at wildlife other than deer is prohibited.

(15) All hunters are required to wear a minimum of 400 total square inches of a safety fluorescence color material on the head, chest, and back.

(16) The use of nails, wire, screws or bolts to attach stands to trees is prohibited.

Presquile National Wildlife Refuge

Public hunting of white-tailed deer is permitted on the entire refuge except within 200 yards of all buildings. Hunting shall be subject to the following special conditions:

(1) A Federal permit will be required at no charge to the applicant. Permits are nontransferable. Alternates will also be selected from standby hunters at the ferry landing to fill stands left open by permittees who do not show up.

(2) Only white-tailed deer may be taken fron one-half hour before sunrise to one-half hour after sunset with bow and arrow only on October 16, 17, 24; and with shotgun on October 31, and November 7, 1981.

(3) Bag limits: One deer per day, either sex.

(4) All hunters must be checked in by 5:45 a.m., e.d.t. (4:45 a.m., e.s.t.). Hunters must enter the refuge on the ferry at 6 a.m., e.d.t. (5 a.m., e.s.t.), except that boats with engines no larger than 10 hp will be permitted only for those hunters who have been assigned a swamp stand requiring entry by boat. All boat occupants must wear a life jacket. Before leaving the refuge, hunters must be checked out by a refuge official either at the official State checking station at the Refuge Headquarters or at the boat launch area on the mainland.

(5) Possession of firearms on the refuge during the bow and arrow only hunts is prohibited.

(6) All arrows in the possession of each hunter must be marked with the stand number issued to the hunter.

(7) Only buckshot is permitted during the shotgun hunts.

(8) Each hunter will be assigned a stand corresponding to his permit number. Shotgun hunters will remain on their assigned stand throughout the day's hunt. Bow hunters will remain on their assigned stand from one-half hour before sunrise to 10 a.m. From 10 a.m., to one-half hour after sunset, they may hunt anywhere within the open area. Hunters must wear, so as to be readily visible, a minimum of 400 square inches of fluorescent orange material on the chest and on the back above the waistline. Gun hunters must wear fluorescent orange at all times; bow hunters must wear fluorescent orange when going to and from their stand, and when hunting away from their stand.

(9) All hunters under 18 years of age must be accompanied by and under the immediate supervision of an adult.

(10) Scouting will be permitted on October 9, and 10, 1981. The refuge ferry will take passengers to the island at 8 a.m., e.d.t., and return to the mainland at 10 a.m. and 12 noon, e.d.t.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28137 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 32

National Wildlife Refuges in Kentucky, North Carolina, South Caroline, and Tennessee; Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: It has been determined that the opening of certain national wildlife refuges in Kentucky, North Carolina, South Carolina and Tennessee to hunting is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. This document establishes special regulations effective for the upcoming upland game and big game hunting seasons. The name of each affected refuge and the special regulations for each refuge are set forth below.

EFFECTIVE DATE: September 29, 1981.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the address or telephone number listed below:

William C. Hickling, Area Manager, U.S. Fish and Wildlife Service, Plateau Building, Room A-5, 50 South French

Broad Ave., Asheville, N.C. 28801. Telephone 704–258–2850, Ext. 321.

Marvin T. Hurdle, Refuge Manager, Carolina Sandhills National Wildlife Refuge, Route 2, Box 130, McBee, South Carolina 29101. Telephone 803–335–8401.

George R. Garris, Refuge Manager, Cape Romain National Wildlife Refuge, Rt. 1, Box 191, Awendaw, S.C. 29429. Telephone 803–928–3368.

Paul Ferguson, Refuge Manager, Santee National Wildlife Refuge, Route 2, Box 66, Summerton, S.C. 29148. Telephone 803–478–2217.

J. C. Bryant, Refuge Manager, Hatchie National Wildlife Refuge, Box 187, Brownsville, Tennessee 38012. Telephone 901–772–0501.

Wendell C. Crews, Refuge Manager, Reelfoot (and Lake Isom) National Wildlife Refuge, P.O. Box 98, Samburg, Tennessee 38254. Telephone 901–538–2481.

Vandiver L. Childs, Refuge Manager, Tennessee National Wildlife Refuge, Box 849, Paris, Tennessee 38242. Telephone: 901–642–2091.

John C. Fields, Refuge Manager, Pungo National Wildlife Refuge, P.O. Box 267, Plymouth, North Carolina 27962. Telephone: 919–793–2143.

Jerry L. Holloman, Refuge Manager, Pee Dee National Wildlife Refuge, P.O. Box 780, Wadesboro, N.C 28170. Telephone: 704–694–4424.

SUPPLEMENTARY INFORMATION: The author of this document is Robin H. Fields, Asheville Area Office; U.S. Fish and Wildlife Service, Plateau Building, Room A–5, 50 South French Broad Ave., Asheville, North Carolina 28801, 704–258–2850, Ext. 392.

Hunting on portions of the following refuges shall be in accordance with applicable State and Federal regulations, subject to additional Special Regulations and conditions as indicated. Portions of the refuges which are open to hunting are designated by signs and/or delineated on maps. Special conditions applying to individual refuges and maps are available at the refuge headquarters listed above.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires that: (1) Any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Impact Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Because of the time limitation involved to coordinate the State and Federal hunting regulations and because of the rapid approach of the hunting seasons, the U.S. Department of the Interior has concluded that "good cause" exists within the meeting of 5 U.S.C. 553(d)(3), of the Administrative Procedure Act to expedite the implementation of these special regulations. Therefore, the effective date is September 29, 1981.

Note.—The Department of the Interior has determined that this document is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193) and that the rulemaking would not have a "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act and 43 CFR Part 14.

§ 32.22 Special regulations; upland game; for individual refuge areas.

Kentucky

Reelfoot National Wildlife Refuge

Squirrel and raccoon hunting will be permitted on approximately 2,034 acres of the Reelfoot National Wildlife Refuge.

Squirrels (gray and fox) may be taken through October 15, 1981. Only shotguns and .22 caliber rimfire rifles will be permitted. Dogs will be prohibited.

Raccoons may be taken on the Long Point refuge unit from September 30 through October 3, 1981. There is no bag limit. Hunting will be permitted from 7:30 p.m. to midnight. The use of dogs will be permitted. Axes, saws, and other cutting implements will be prohibited. Hunters will be required to check in and check out at the designated check station.

All hunters under 16 years of age must be under the close supervision of an adult.

Tennessee

Hatchie National Wildlife Refuge

Squirrel and raccoon hunting will be permitted on approximately 11,555 acres of the Hatchie National Wildlife Refuge.

Squirrels may be taken through September 20, 1981. Hunting will be permitted from one hour before sunrise to one hour after sunset.

Raccoons may be taken from October 9 through November 15, 1981. Hunting will be permitted from sunset to midnight. Axes, saws, and other cutting implements will be prohibited. The use of dogs will be permitted. Dogs must wear a collar showing the owner's name, address and telephone number.

Hunters under 16 years of age must be under the close supervision of an adult.

Lake Isom National Wildlife Refuge

Squirrel and raccoon hunting will be permitted on approximately 1,850 acres of the Lake Isom National Wildlife Refuge.

Squirrels may be taken through October 15, 1981. Only shotguns and .22 caliber rimfire rifles will be permitted. Dogs will be prohibited.

Raccoons may be taken from September 30 through October 3, 1981. There is no bag limit. Hunting will be permitted from 7:30 p.m. to midnight. The use of dogs will be permitted. Axes, saws and other cutting implements will be prohibited. Hunters will be required to check in and check out at the designated check station.

All hunters under 16 years of age must be under close supervision of an adult.

Reelfoot National Wildlife Refuge

Squirrel and raccoon hunting will be permitted on approximately 9,585 acres of the Reelfoot National Wildlife Refuge.

Squirrels may be taken through October 15, 1981. Only shotguns and .22 caliber rimfire rifles will be permitted. Dogs will be prohibited.

Raccoons may be taken on the Long Point refuge unit from September 30 through October 3, 1981. There will be no bag limit. Hunting will be permitted from 7:30 p.m. to midnight. The use dogs will be permitted. Axes, saws and other cutting implements will be prohibited. Hunters will be required to check in and check out at the designated check station.

Hunters under 16 years of age must be under the close supervision of an adult.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

North Carolina

Pee Dee National Wildlife Refuge

White-tailed deer hunting will be permitted on approximately 6,125 acres, in Anson and Richmond Counties, of the Pee Dee National Wildlife Refuge.

The archery hunt in Richmond County will be through October 3, 1981. The

archery hunt in Anson County will be September 7 through November 14, 1981. The State bag limit will apply in both counties. No permits required.

The gun hunts in Richmond and Anson Counties will be November 23–24 and 27–28, 1981. The bag limit will be one deer of either sex. Permits for 175 hunters for each gun hunt will be selected by public drawing.

All hunters must wear at least 500 square inches of daylight fluorescent orange material on outer garments above the waist. Dogs and "man-driving" will be prohibited. Only portable stands will be permitted. Driving a nail, screw, spike or other metal object into any tree, or hunting from such a tree, will be prohibited. Hunters will be permitted to enter the area one hour before sunrise. Hunters under 16 years of age must be under the close supervision of an adult.

Pungo National Wildlife Refuge

White-tailed deer hunting will be permitted with bows on approximately 12,000 acres and with shotguns and primitive weapons on approximately 7,000 acres of the Pungo National Wildlife Refuge. The archery hunt will be through September 30, 1981. The gun hunt will be October 8, 9, 14, 15, 20, 21, 28, and 27, 1981. The bag limit will be one deer either sex per day; two deer per season. All deer must be checked at field headquarters prior to removal from the refuge.

Entry into the hunting area will be permitted one hour before shooting time. Shooting hours will be 30 minutes before sunrise to sunset. Permits for gun hunting will be issued on the basis of a public drawing. No permits will be required for bow hunting.

All gun hunters must wear outer garments consisting of at least 500 square inches of a daylight fluorescent orange material above the waist. Hunters under 16 years of age must be under the close supervision of an adult. Hunting from a stand or blind permanently attached to a tree will be prohibited.

South Carolina

Cape Romain National Wildlife Refuge

White-tailed deer hunting will be permitted on approximately 2,500 acres of the Bulls Island Unit of the Cape Romain National Wildlife Refuge. The archery hunts will be November 2–7, 1981, and December 7–12, 1981. The bag limit will be two deer, either sex. Hunting is prohibited within 100 feet of the Walking Trail and the Beach Road.

Camping will be permitted from 9:00 a.m. on the day preceding the hunt until noon on the day following the hunt. Hunters will be restricted to the camping area from 7:00 p.m. to 4:30 a.m. Hunters under 16 years of age must be under the close supervision of an adult. Dogs, nails, paint, and flagging will be prohibited.

Carolina Sandhills National Wildlife Refuge

White-tailed deer hunting will be permitted on approximately 43,767 acres of the Carolina Sandhills National Wildlife Refuge.

The primitive weapons hunt will be October 19–24, 1981; the bag limit will be two deer. Archers may take either sex deer. Muzzle loaders may take one antlerless deer.

The still gun hunts will be November 2–5, 16 and 17, 1981. The bag limit will be three deer. Only bucks with at least three-inch antlers visible above the hairline may be taken on November 2 and 3. Either sex deer may be taken on the remaining dates.

During the still gun hunts, only shotguns using slugs or centerfire rifles using soft-nosed ammunition will be allowed.

Hunting hours will be from one hour before sunrise until one hour after sunset. Hunters must enter the hunting area at designated entrance points and must park their vehicles on the hunting area. Hunting will be prohibited from road rights-of-way and within 500 feet of the paved visitor drive. All deer must be checked prior to removal from the refuge. Hunters under 14 years of age must be under the close supervision of an adult. All hunters must wear an outer garment containing a minimum of 500 square inches of daylight fluorescent orange material above the waist. Hunting from a stand which is permanently attached to a tree will be prohibited.

Santee National Wildlife Refuge

White-tailed deer hunting will be permitted on approximately 4,300 acres of the Santee National Wildlife Refuge. The archery hunt will be October 3 through 9, 1981. The combined archery and primitive weapons hunt will be October 17 through 23, 1981. The bag limit will be two deer either sex. Crossbows or drugged arrows will be prohibited. No handguns or other firearms will be permitted. Primitive weapons include bow and arrow, muzzleloading shotguns (20 gauge or larger), and muzzleloading rifles (.36 caliber or larger).

Hunters must enter the refuge at the designated entry point only. Deer must be checked in at the designated check station. Hunters under 14 years of age must be under the close supervision of an adult. Hunters may scout the area without weapons from September 19 through October 2, 1981.

Tennessee

Natchie National Wildlife Refuge

White-tailed deer hunting will be permitted on approximately 11,555 acres of the Hatchie National Wildlife Refuge. The archery deer hunt will be through October 11, 1981. The bag limit will be two deer, either sex. Hunting hours will be from one hour before sunrise to one hour after sunset. Hunting from a permanent tree stand will be prohibited. The use of dogs will be prohibited. Hunters under 16 years of age must be under the close supervision of an adult. All deer taken must be checked in at the designated check station.

Tennessee National Wildlife Refuge

White-tailed deer hunting will be permitted with muzzleloading rifles on approximately 9,800 acres on November 21 and 22, 1981, and January 9, 1982. Gun, archery, and muzzleloading hunting will be permitted on approximately 5,000 acres on December 19 and 20, 1981. The bag limit will be one deer of either sex per hunter. Driving of deer will be prohibited.

All hunters must wear outer garments of daylight fluorescent orange material of at least 500 square inches on the upper body and head. Hunters under 16 years of age must be under the close supervision of an adult. A refuge permit will be required. All hunt participants will be selected by public drawing. Hunters will be permitted on the public hunting area from one hour before sunrise to one hour after sunset. Hunters must check in and out at the designated check stations.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas, generally, which are set forth in Title 50 Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28128 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 32

National Wildlife Refuges in Maine, Massachusetts and Vermont; Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: It has been determined that the opening to hunting of certain National Wildlife Refuges is compatible with the objective for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. These special regulations describe the conditions under which hunting will be permitted on portions of certain National Wildlife Refuges in Maine, Massachusetts and Vermont.

EFFECTIVE DATES: September 29, 1981 through January 31, 1982.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the following addresses or telephone numbers:

Charles R. Maloy, Area Manager, U.S. Fish and Wildlife Service, P.O. Box 1518, Concord, New Hampshire 03301, 603–224–9558.

George Gavutis, Refuge Manager, Parker River National Wildlife Refuge, Northern Blvd., Plum Island, Newburyport, Massachusetts 01950, 617–465–5753.

David Beall, Refuge Manager, Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts 01776, 617–443–4661.

Thomas Mountain, Refuge Manager, Missisquoi National Wildlife Refuge, Swanton, Vermont 05488, 802–868–4781.

SUPPLEMENTARY INFORMATION: The author of this document is Edward S. Moses, Refuges and Wildlife Resources, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158, 617–965–5100, X–222.

Hunting on portions of the following refuges shall be in accordance with applicable State and Federal seasons and regulations, subject to additional special regulations and conditions indicated. Portions of refuges which are open to hunting are designated by signs and/or shown on maps. Under the provisions of 50 CFR 26.32, additional regulations may apply. Contact the Refuge Manager for further information. Special conditions applying to individual refuges and maps are available at refuge headquarters or from the office of the Area Manager.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires: (1) That any recreational use permitted will not interfere with the primary purpose for which the area was established, and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation. The recreational use authorized by these regulations will not interfere with the primary purposes for which the following National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Because of the time limitation involved to coordinate the State and Federal hunting regulations and because of the rapid approach of the hunting seasons, the U.S. Department of the Interior has concluded that "good cause" exists within the meaning of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act to expedite the implementation of these special regulations. Effective date is September 1, 1981.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Massachusetts

Parker River National Wildlife Refuge

Public hunting of waterfowl and coots is permitted only on the areas designated by signs as open to hunting. These open areas, comprising 1,805 acres, and known as the Pine Island Hunting Area (Area A), Parker River Hunting Area (Area B), Nelson's Island Hunting Area (Area C), and the Youth Hunting Area (Area D), are shown on maps available at Refuge Headquarters, or from the Area Manager. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of waterfowl and coots, subject to the following special conditions:

(1) The number of hunters on the Pine Island Area will be limited to 75 each day, Parker River Area to 25 each day, and the Nelson's Island Area to 50 each day. Participation will be on a first-come, first-served basis. Hunters using Area B must each bring and set out at least two (2) waterfowl decoys and waterfowl only may be hunted within 50 yards of these set decoys.

(2) Hunters on all three areas may not fire or possess more than 15 shotshells per day. Steel shot is required for all shotguns. Waterfowl hunters may not have in their possession lead shotshells.

(3) Hunters when requested by Federal or State enforcement officers, must display for inspection all game, hunting equipment, and ammunition.

(4) The Youth Hunting Area will be open during the regular State waterfowl season for young waterfowl trainees on selected days, except, Sundays, under the provisions of this special program. Literature describing this program is available at the Refuge Headquarters.

(5) Boat access is prohibited on area C and required on Area A. Boats may be landed only during the open season on waterfowl and by persons authorized to participate in refuge hunting programs. Access to Area B is permitted by foot from the refuge parking lot off of Marsh Avenue or via boat from the refuge launching ramp on Plum Island, or from off-refuge sites. Access to Area C must be from the refuge parking lot on Stackyard Road.

Oxbow National Wildlife Refuge

Public hunting of woodcock and snipe is permitted on the area designated by signs as open to hunting.

Vermont

Missisquoi National Wildlife Refuge

The public hunting of migratory game birds is permitted only on the areas shown on maps available at Refuge Headquarters or from the Area Manager. Hunting shall be in accordance with all applicable Federal and State regulations covering the hunting of migratory game birds. On those areas open to the public hunting of migratory game birds for which a permit is not required, stake blinds may be constructed in accordance with State regulations. Blinds must be removed by May 15, 1982.

That portion of the refuge, known as the Webb Marsh, which includes Long Marsh Bay and channel, Brush Creek, and Metcalfe Island, will be reserved for young waterfowl hunters only. Hunting by youths is permitted on Saturdays and Sundays from the beginning of the State waterfowl hunting season through the first five weekends. Shooting is permitted from designated blinds from legal shooting time until 11:00 a.m. Youth waterfowl hunters will be limited to the use and possession of 25 shot shells each.

That portion of the refuge known as Patrick Marsh-Charcoal Creek (southwest of Route 78 only) will be a controlled hunting area by special use permit only. Hunting areas will be zoned in Patrick Marsh and Charcoal Creek to

Winter's north boundary. The remainder of the creek in public ownership will be closed. Hunting will be on Tuesdays, Thursdays and Saturdays only. Shooting will be from legal shooting time until 11:00 a.m. Two parties will be permitted to hunt Patrick Marsh and four parties to hunt Charcoal Creek. A party consists of not more than two hunters and both must hunt together in one location. A boat is required. Parties will regulate distance between each other with a minimum distance of two hundred (200) yards. A minimum of six decoys per party is required. Hunting must be within fifty (50) feet of the six set decoys. Jump shooting and permanent blinds are not permitted. No person shall use or have in his possession more than 15 shells.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28133 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 32

National Wildlife Refuges in Maine, Massachusetts and Vermont; Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: It has been determined that the opening to hunting of certain National Wildlife Refuges is compatible with the objective for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. These special regulations describe the conditions under which hunting will be permitted on portions of certain National Wildlife Refuges in Maine, Massachusetts and Vermont.

EFFECTIVE DATES: September 29, 1981 through January 31, 1982.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the following addresses or telephone numbers:

Charles R. Maloy, Area Manager, U.S. Fish and Wildlife Service, P.O. Box 1518, Concord, New Hampshire 03301, 603-224-9558.

Douglas Mullen, Refuge Manager, Moosehorn National Wildlife Refuge, P.O. Box X, Calais, Maine 04619, 207-454-3521.

David Beall, Refuge Manager, Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts 01776, 617-443-4661.

Thomas Mountain, Refuge Manager, Missisquoi National Wildlife Refuge, Swanton, Vermont 05488, 802-868-4781.

SUPPLEMENTARY INFORMATION: The author of this document is Edward S. Moses, Refuges and Wildlife Resources, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158, 617-965-5100, X-222.

Hunting on portions of the following refuges shall be in accordance with applicable State and Federal seasons and regulations, subject to additional special regulations and conditions indicated. Portions of refuges which are open to hunting are designated by signs and/or shown on maps. Under the provisions of 50 CFR 26.32, additional regulations may apply. Contact the Refuge Manager for further information. Special conditions applying to individual refuges and maps are available at Refuge Headquarters or from the office of the Area Manager.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires: (1) That any recreational use permitted will not interfere with the primary purpose for which the area was established, and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation. The recreational use authorized by these regulations will not interfere with the primary purposes for which the following National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Because of the time limitation involved to coordinate the State and Federal hunting regulations and because of the rapid approach of the hunting seasons, the U.S. Department of the Interior has concluded that "good cause" exists within the meaning of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act to expedite the implementation of these special regulations. Effective date is September 1, 1981.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Massachusetts

Oxbow National Wildlife Refuge

Public hunting of upland birds and small game is permitted on the area designated by signs as open to hunting. These open areas, comprising 600 acres, are shown on maps available at Refuge Headquarters, Sudbury, Massachusetts, or from the Area Manager. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of migratory game birds and upland game subject to the following special conditions:

(1) Possession of slugs or buckshot is prohibited.

(2) Possession of a weapon other than a shotgun is prohibited.

(3) Vehicles are restricted to the designated parking at the south end of the refuge accessible from the Still River Depot Road. Entry by routes other than by the county road, Still River Depot Road, is prohibited.

Vermont

Missisquoi National Wildlife Refuge

The public hunting of upland game is permitted only on the areas shown on maps available at Refuge Headquarters. Hunting shall be in accordance with all applicable State regulations covering the hunting of upland game, subject to the following special condition:

(1) Rifles may no be used on that portion of the refuge lying east of the Missisquoi River.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Maine

Moosehorn National Wildlife Refuge

Public hunting of deer is permitted except on areas designated by signs as closed during the State firearms season. This open area is shown on maps available at Refuge Headquarters, and from the Area manager. Hunting shall be in accordance with State regulations covering the hunting of deer.

Vermont

Missisquoi National Wildlife Refuge

The public hunting of deer is permitted only on the areas shown on maps available at Refuge Headquarters. Hunting shall be in accordance with all applicable State regulations covering the hunting of deer, subject to the following special condition:

(1) During the regular season, only shotguns may be used on that part of the refuge lying east of the Missisquoi River.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28139 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 32

National Wildlife Refuges in Michigan, Ohio, Illinois, Wisconsin, Minnesota, Iowa, Missouri and Portions of Nebraska; Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: It has been determined that the opening of certain National Wildlife Refuges to public hunting for migratory game birds is compatible with the objectives for which the areas were established, will utilize a renewable resource and will provide additional recreational opportunity to the public. These special regulations describe the conditions under which hunting will be permitted on portions of certain National Wildlife Refuges in Michigan, Ohio, Illinois, Wisconsin, Minnesota, Iowa, Missouri, and portions of Nebraska.

DATE: Effective September 29, 1981.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the address or telephone number listed below:

John Popowski, Area Manager, U.S. Fish and Wildlife Service, 1405 S. Harrison Rd., Room 202, East Lansing, MI 48823. Telephone (517) 337-6608. For Michigan, Indiana and Ohio.

Donald N. Frickie, Refuge Manager, Seney National Wildlife Refuge, Seney, MI 49983. Telephone (906) 586-9851.

David Frisque, Acting Refuge Manager, Shiawassee National Wildlife Refuge, 6975 Mower Rd., Route 1, Saginaw, MI 48601. Telephone (517) 777-5930.

Leland E. Herzberger, Refuge Manager, Ottawa National Wildlife Refuge, 14000 W. State Rte. 2, Oak Harbor, OH 43449. Telephone (419) 898-0014.

George G. P. Bekeris, Area Manager, U.S. Fish and Wildlife Service, 530 Federal Building and U.S. Court House, 316 North Robert Street, St. Paul, MN 55101. Telephone (612) 725-7641. For Minnesota, Wisconsin and portions of Illinois and Iowa.

Ronald V. Papike, Refuge Manager, Sherburne National Wildlife Refuge, Route #2, Zimmerman, MN 55398. Telephone (612) 389-3323.

Omer N. Swenson, Refuge Manager, Tamarac National Wildlife Refuge, Rochert, MN 56578. Telephone (218) 847-4355.

Robert Howard, Refuge Manager, Upper Mississippi River Wild Life and Fish Refuge, 122 W. 2nd Street, Winona, MN 55987. Telephone (507) 452-4232.

Tom A. Saunders, Area Manager, U.S. Fish and Wildlife Service, 2701 Rockcreek Parkway, Suite 106, North Kansas City, Missouri 64116. Telephone (816) 374-6166. For Missouri, Iowa, and portions of Illinois and Nebraska.

George Gage, Refuge Manager, DeSoto National Wildlife Refuge, RR #1, Box 114, Missouri Valley, Iowa 51555. Telephone (712) 642-4121.

Thomas S. Sanford, Refuge Manager, Chautauqua National Wildlife Refuge, RR #2, Havana, Illinois 62644. Telephone (309) 535-2290.

Wayne D. Adams, Refuge Manager, Crab Orchard National Wildlife Refuge, P.O. Box J, Carterville, Illinois 62918. Telephone (618) 997-3344.

O. T. Fears, Refuge Manager, Mark Twain National Wildlife Refuge, Louisa Division, RR #1, Wapello, Iowa 52653. Telephone (319) 523-6982.

Gerald Clawson, Refuge Manager, Mingo National Wildlife Refuge, RR #1, Box 8, Puxico, Missouri 63960. Telephone (314) 222-3589.

John Toll, Refuge Manager, Swan Lake National Wildlife Refuge, P.O. Box 68, Sumner, Missouri 64681. Telephone (816) 856-3323.

SUPPLEMENTARY INFORMATION: The primary authors of the document are: John R. Frye, Area Office, East Lansing, Michigan; James R. Lennartson, Area Office, St. Paul, Minnesota; and, Donald G. Young, Area Office, Kansas City, Missouri. These individuals can be contacted through the addresses and telephone numbers listed above.

Hunting on portions of the following refuges shall be in accordance with all applicable State and Federal regulations, subject to additional special regulations and conditions as indicated. Portions of refuges which are open to hunting are designated by signs and/or delineated on maps. Special conditions and maps applying to individual refuges are available at refuge headquarters or from the Office of the Area Manager (addresses listed above).

The Refuge Recreation Act of 1962 (16 U.S.C. 460K) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established.

This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities, permitted by these regulations.

Access points on certain refuges are limited to designated roads or other specific areas. Vehicle use on all refuge areas is restricted to designated roads and lands.

Only non-toxic (steel) ammunition may be used during refuge migratory water-fowl hunts.

Because of the time limitation involved to coordinate the State and Federal hunting regulations and because of the rapid approach of the hunting season, the U.S. Department of the Interior has concluded "good cause" exists within the meaning of 5 U.S.C. 553(d)(3), of the Administrative Procedure Act to expedite the implementation of these special regulations. Therefore, the effective date of these special regulations is September 29, 1981.

Note.—The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193), and that the rulemaking would not have "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (Pub. L. 96-354) and 43 CFR Part 14.

§ 32.12 Special regulations: Migratory Game Birds; for individual refuge areas.

Michigan

Seney National Wildlife Refuge

Hunting of Woodcock and Wilson's Snipe (Jacksnipe) shall be in accordance with all applicable State regulations and subject to the following special conditions:

Woodcock and Wilson's Snipe (Jacksnipe) hunting is permitted on 33,525 acres of the refuge designated as Area B from September 15 through November 12, 1981.

Shiawassee National Wildlife Refuge

A. Public hunting of *geese* only is permitted on Federal lands administered by Shiawassee National Wildlife Refuge. The refuge participates in a harvest quota established by the State of Michigan for the Saginaw County Goose Management Area of which the refuge is a part. The goose season will be closed early should the quota be reached.

Goose hunting on Federal lands administered by Shiawassee National Wildlife Refuge comprises 1,100 acres and is subject to the following conditions:

1. Hunting shall be by Federal permit and only from assigned blinds or pits. Blind assignments will be determined by drawings each day.

2. Under the provisions of 50 CFR 26.32, additional regulations may apply. Contact the Refuge Manager for further information.

3. From October 25 through the month of November a daily public drawing will be held to determine who may hunt during that day. Hunters must be present for each days drawing.

4. Goose hunting will be on odd days only throughout the entire season.

5. Only non-toxic steel shot will be permitted. The limit is 12 shells per hunter.

6. Hunters may not have shotgun shells containing lead or other toxic shot in their possession.

7. A blind rental fee of $2.00/hunter is required. Decoys can be rented for $1.00/dozen.

8. After completion of the days hunt, all hunters must proceed to refuge headquarters for check-out and the submission of geese for examination.

B. *State administered Federal Lands.* Public hunting of *both ducks* and *geese* is permitted on 215 acres of Federal land currently administered by the State of Michigan This parcel has in the past been a *goose* only zone.

Goose and *duck* hunting on Federal lands administered by the State is subject to the following conditions:

1. Hunting shall be by appropriate State permit or public draw and only from assigned blinds. Blind assignments will be determined by drawings each day.

2. Public hunting on this parcel shall be on odd days only throughout the season. Goose hunting will cease if the harvest quota is reached.

3. Only non-toxic steel shot will be permitted. Shell limit is 25 per hunter when hunting ducks and geese and only 12 shells per hunter when goose hunting only.

4. Hunters *may not* have shotgun shells containing lead or other toxic shot in their possession.

5. After completion of the days hunt, all hunters must proceed to DNR headquarters for check-out and submission of ducks and geese for examination.

Ohio

Ottawa National Wildlife Refuge

Public hunting of Canada, snow (including blue color phase) and white-fronted geese is permitted, on areas comprising 640 acres. Hunting shall be in accordance with all applicable Federal and State Regulations subject to the following conditions:

(1) Hunting shall be by State permit and only from assigned blinds. Blind assignments will be determined by drawings.

(2) A fee of five dollars per hunter will be required for blind rental.

(3) No more than two persons per blind (permit holder and one guest) are permitted.

(4) Hunters must report to the check station at least one hour before legal shooting time.

(5) Each hunter may possess not more than 10 shells. Only non-toxic steel shot, sizes no larger than No. 1, will be permitted. Hunters may not have shotgun shells containing lead to other toxic shot in their possession.

(6) Hunters will be permitted to pursue and shoot downed geese only within 75 yards of their assigned blind.

(7) Hunting hours shall be from the legal opening time in the morning until 12 noon.

(8) All hunters must be out of their assigned blinds by 1:00 p.m.

(9) All hunters must check in at the check station and submit their geese for examination by 2:00 p.m.

(10) The use of trained dogs to retrieve downed geese within the hunting area is permitted.

Minnesota

Sherburne National Wildlife Refuge

Public hunting of ducks, coots, rails, Wilson's snipe and woodcock is permitted, on an area comprising 9,900 acres (designed as Areas A and B on refuge map), subject to the following special conditions:

(1) Use of steel shot is required for hunting ducks and coots. Possession of lead shot shells while hunting ducks and coots is prohibited.

(2) Field possession of migratory birds is prohibited in areas of refuge closed to migratory bird hunting.

(3) Only non-motorized boats are permitted in the area open to the hunting of ducks and coots and must be launched at designated access sites.

(4) Boats and decoys must be removed from the refuge at the end of each day.

(5) Blinds must be removed at the end of each day except for blinds made entirely of marsh vegetation.

(6) The use of dogs to retrieve downed waterfowl and coots is permitted and encouraged provided they are under control at all times.

Tamarac National Wildlife Refuge

Public hunting of ducks, geese and coots is permitted, on an area comprising approximately 12,500 acres delineated on maps available at the refuge office, subject to the following special conditions:

(1) Use of steel shot is required for hunting waterfowl and coots. Possession of lead shot shells while hunting waterfowl and coots is prohibited.

(2) The use of dogs to retrieve downed waterfowl and coots is permitted and encouraged provided they are under control at all times.

(3) Boats are permitted for waterfowl hunting.

Illinois, Iowa, Minnesota, Wisconsin

Upper Mississippi River Wild Life and Fish Refuge

Public hunting of migratory game birds is permitted where designated by "Public Hunting Area" signs subject to the following special conditions:

(1) Use of steel shot is required for hunting waterfowl and coots. Possession of lead shot shells while hunting waterfowl and coots is prohibited.

(2) The use of dogs for retrieving waterfowl and coots is permitted and encouraged provided such dogs are under control at all times.

(3) The Illinois portion of the refuge is open for teal hunting as provided by "Illinois State Teal Regulations." Hunters may hunt during the special teal season from other than established waterfowl hunting blinds or small boats.

(4) The hunting of migratory waterfowl in the Illinois portion of the refuge, pools 12, 13, and 14 including Potter's Marsh is governed by special conditions which are hereby adopted and are available from the Refuge Manager, Upper Mississippi River Wild Life and Fish Refuge, Savanna District, P.O. Building, Savanna, Illinois 61074.

Iowa

DeSoto National Wildlife Refuge

1. Migratory game bird hunting will be permitted only on 174 acres of refuge land adjacent to U.S. Highway 30.

2. Hunting season will be November 1, 1981 through the closing date of the waterfowl seasons to be set by the Iowa Conservation Commission. Both dates are inclusive.

3. Shooting hours will start consistent with State regulations and will close at 12 noon daily.

4. Only waterfowl species (ducks, geese and coots) may be taken.

5. All hunting will be by refuge permit only. Under the provisions of 50 CFR 26.32, additional regulations may apply. Contact the Refuge Manager for further information.

6. No provision will be made for "standby" hunters.

7. All hunters must hunt from refuge-constructed 3-person blinds only.

8. Blinds will be assigned on a drawing basis each day of the hunt.

9. All hunting will be from assigned blinds only, with the exception that wounded birds may be pursued and shot within the shooting zone (within 40 yards of blind, as posted). Wounded birds may be pursued beyond this point up to the retrieval zone line (within 100 yards of blind, as posted), but guns must remain within the shooting zone.

10. Hunters will be required to check in and out at the refuge check station on each hunting day.

11. Permit holders must park in assigned parking lots within the hunting area. Non-refuge hunters may not use the refuge parking areas as access to private lands.

12. Hunters will be allowed the use of decoys (personal or rented at check station) and retrieving dogs (one per hunter). Goose decoys, up to 3 dozen, may be rented at the refuge check station at a charge of $1.00 per dozen. Hunters will be responsible for rented decoys and will be charged for any decoys lost or damaged.

13. Only steel shot loads will be allowed in the hunting area.

14. A maximum of 25 shells per hunter will be allowed per day.

15. Camping will not be allowed on the refuge.

16. All litter, including empty shotgun shells, must be picked up before leaving the blind site.

Mark Twain National Wildlife Refuge (Louisa Division)

Public hunting of migratory game birds is permitted, on areas designated by signs, comprising 1,760 acres on Big Timber Unit and Turkey and Otter Islands, subject to the following special conditions:

1. Blinds—no permanent structures; excluding wood or brush duck blinds, shall be permitted; no blinds shall be locked or otherwise sealed against public entry.

2. Blinds shall be open to the public on a first-come, first-served basis if not occupied 30 minutes after the start of legal shooting hours.

3. The use of dogs for retrieving waterfowl is permitted, provided such dogs are under control at all times.

Nebraska

DeSoto National Wildlife Refuge

1. Migratory game bird hunting will be permitted only on an area comprising 326 acres located west of the Missouri River in Washington County, Nebraska.

2. Goose hunting season will open November 1, 1981 through December 6, 1981. Both dates are inclusive.

3. Duck hunting season will open November 1, 1981 and close consistent with the State season.

4. Hunting will be permitted only on Sunday, Tuesday, Thursday and Saturday during the open season.

5. Shooting hours will start consistent with State regulations and will close at 12 noon daily.

6. Only waterfowl species (ducks, geese and coots) may be taken.

7. All hunting will be by refuge permit only. Under the provisions of 50 CFR 26.32, additional regulations may apply. Contact the Refuge Manager for further information.

8. Permits can not be transferred and fees will not be refunded. No provision will be made for "standby" hunters.

9. All hunters must hunt from refuge-constructed 3-person blinds only.

10. Blinds will be assigned on a drawing basis each day of the hunt.

11. All hunting will be from assigned blinds only with the exception that wounded birds may be pursued and shot within the shooting zone (within 40 yards of blind as posted). Wounded birds may be pursued beyond this point up the to retrieval zone line (within 100 yards of blind as posted), but guns must remain within the shooting zone.

12. Hunters will be required to check in and out at the refuge check station on each hunting day.

13. Permit holders must park in assigned parking lots within the hunting area. Non-refuge hunters may not use the refuge parking areas as access to private lands.

14. Hunters will be allowed the use of decoys (personal or rented at check station) and retrieving dogs (one per hunter). Goose decoys, up to 3 dozen, may be rented at the refuge check station at a charge of $1.00 per dozen. Hunters will be responsible for rented decoys and will be charged for any decoys lost or damaged.

15. Only steel shot loads will be allowed in the hunting area.

16. A maximum of 25 shells per hunter will be allowed per day.

17. Camping is not allowed on the refuge.

18. All litter, including empty shotgun shells, must be picked up before leaving the blind site.

Illinois

Chautauqua National Wildlife Refuge

Public hunting of migratory game birds is permitted only on areas designated by signs, comprising 745 acres, subject to the following special regulations:

1. Blinds—no permanent structure; excluding wood or brush duck blinds shall be permitted; no blinds shall be locked or otherwise sealed against public entry.

2. Use of non-toxic (steel) ammunition is required for hunting waterfowl and coots. Possession of lead shot shells while hunting waterfowl and coots is prohibited.

Crab Orchard National Wildlife Refuge

Public hunting of migratory game birds is permitted on areas comprising 23,000 acres, designated as Areas I and III, subject to the following special conditions:

1. Only portable or temporary blinds located on the immediate vicinity of the site may be used for hunting and these must be removed or dismantled at the end of the day's hunt. Blinds and pits beyond the shoreline of refuge waters may not be constructed, established, occupied or used.

2. Use of steel shot is required for hunting waterfowl and coots. Possession of lead shot shells while hunting waterfowl and coots is prohibited.

3. During the goose season, on Grassy, Orchard, Sawmill and Turkey Islands, hunters may hunt only from blinds provided by the refuge. Only hunters occupying these blinds are allowed on these islands during the goose hunting season.

4. Only authorized waterfowl hunting is permitted on the controlled areas of Grassy Point, Carterville Public, and Greenbriar Road areas from sunrise to 12:00 noon daily during the goose season. Goose hunting on these areas is subject to the following conditions:

(a) Hunting is permitted only from existing refuge established blinds. This includes lake shorelines.

(b) Hunters must comply with all rules as posted.

Missouri

Mingo National Wildlife Refuge

Waterfowl hunting is permitted only on areas designated by signs as being open to hunting, subject to the following conditions:

1. Dogs may be used to retrieve downed waterfowl within the hunting area.

2. Hunters are not permitted to enter those areas shown as being closed on the refuge hunting map.

3. Waterfowl hunting is restricted to non-toxic (steel) shot only. The possession of lead shot, in the hunting area, is prohibited during the waterfowl hunting season.

4. The use of outboard or electric motors is prohibited.

Swan Lake National Wildlife Refuge

Public hunting for geese only is permitted on designated areas, comprising 2,500 acres within Swan Lake National Wildlife Refuge, subject to the following conditions:

1. Each hunter must obtain a State permit prior to hunting, hunt only from an impartially assigned blind, and fire no more than ten (10) shells.

2. Daily bag limit is determined by applicable State and Federal regulations.

3. Goose hunting is restricted to non-toxic (steel) shot only. The possession of lead shot, in the hunting area, is prohibited.

4. Legally shot geese falling inside the refuge boundary can only be retrieved by authorized officials.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28130 Filed 9-28-81; 8:45 am]

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50 CFR Part 32

National Wildlife Refuges in Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri and Portions of Nebraska; Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: It has been determined that the opening of certain National Wildlife Refuges to public hunting for upland game and big game is compatible with the objectives for which the areas were established, will utilize a renewable resource and will provide additional recreational opportunity to the public. These special regulations describe the conditions under which hunting will be permitted on portions of certain National Wildlife Refuges in Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri, and portions of Nebraska.

DATE: Effective September 29, 1981.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the address or telephone number listed below:

John Popowski, Area Manager, U.S. Fish and Wildlife Service, 1405 S. Harrison Rd., Room 202, East Lansing, MI 48823. Telephone (517) 337–6608. For Michigan, Indiana and Ohio.

Donald N. Frickie, Refuge Manager, Seney National Wildlife Refuge, Seney, MI 49983. Telephone (906) 586–9851.

David Frisque, Acting Refuge Manager, Shiawassee National Wildlife Refuge, 6975 Mower Rd., Route 1, Saginaw, MI 48601. Telephone (517) 777–5930.

Charles E. Scheffe, Refuge Manager, Muscatatuck National Wildlife Refuge, P.O. Box 631, Seymour, IN 47274. Telephone (812) 522–4352.

George G. P. Bekeris, Area Manager, U.S. Fish and Wildlife Service, 530 Federal Building and U.S. Court House, 316 North Robert Street, St. Paul, MN 55101. Telephone (612) 725–7641. For Minnesota, Wisconsin and portions of Illinois and Iowa.

Joseph Kotok, Refuge Manager, Agassiz National Wildlife Refuge, Middle River, MN 56737. Telephone: (218) 449–4115.

James Heinecke, Refuge Manager, Big Stone National Wildlife Refuge, 25 N.W. 2nd Street, Ortonville, MN 56278. Telephone: (612) 839–3700.

Dorothy Thompson, Acting Refuge Manager, Horicon National Wildlife Refuge, Route #2, Mayville, WI 53050. Telephone: (414) 387–2658.

James M. Carroll, Jr., Refuge Manager, Necedah National Wildlife Refuge, Star Route, Necedah, WI 54646. Telephone: (608) 565–2551.

David E. Heffernan, Refuge Manager, Rice Lake National Wildlife Refuge, Route #2, McGregor, MN 55760. Telephone: (218) 768–2402.

Ronald V. Papike, Refuge Manager, Sherburne National Wildlife Refuge, Route #2, Zimmerman, MN 55398. Telephone: (612) 389–3323.

Omer N. Swenson, Refuge Manager, Tamarac National Wildlife Refuge, Rochert, MN 56578. Telephone: (218) 847–4355.

Robert Howard, Refuge Manager, Upper Mississippi River Wild Life and Fish Refuge, 122 W. 2nd Street, Winona, MN 55987. Telephone: (507) 452–4232.

Tom A. Saunders, Area Manager, U.S. Fish and Wildlife Service, 2701 Rockcreek Parkway, Suite 106, North Kansas City, Missouri 64116. Telephone (816) 374–6166. For Missouri, Iowa, and portions of Illinois and Nebraska.

George Gage, Refuge Manager, DeSoto National Wildlife Refuge, RR #1, Box 114, Missouri Valley, Iowa 51555. Telephone (712) 642–4121.

Wayne D. Adams, Refuge Manager, Crab Orchard National Wildlife Refuge, P.O. Box J, Carterville, Illinois 62918. Telephone (618) 997–3344.

Gregory A. Wolf, Refuge Manager, Mark Twain National Wildlife Refuge, Clarence Cannon Division, Box 88, Annada, Missouri 63330. Telephone (314) 847–2333.

O. T. Fears, Refuge Manager, Mark Twain National Wildlife Refuge, Louisa Division, RR #1, Wapello, Iowa 52653. Telephone (319) 523–6982.

Gerald Clawson, Refuge Manager, Mingo National Wildlife Refuge, RR #1, Box 8, Puxico, Missouri 63960. Telephone (314) 222–3589.

John Toll, Refuge Manager, Swan Lake National Wildlife Refuge, P.O. Box 68, Sumner, Missouri 64681. Telephone (816) 856–3323.

SUPPLEMENTARY INFORMATION: The primary authors of the document are: John R. Frye, Area Office, East Lansing, Michigan; James R. Lennartson, Area Office, St. Paul, Minnesota; and Donald G. Young, Area Office, Kansas City, Missouri. These individuals can be contacted through the addresses and telephone numbers listed above.

Hunting on portions of the following refuges shall be in accordance with all applicable State and Federal regulations, subject to additional special regulations and conditions as indicated. Portions of refuges which are open to hunting are designated by signs and/or delineated on maps. Special conditions and maps applying to individual refuges are available at refuge headquarters or from the Office of the Area Manager (addresses listed above).

The Refuge Recreation Act of 1962 (16 U.S.C. 460K) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requiries (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Access points on certain refuges are limited to designated roads or other specific areas. Vehicle use on all refuge areas is restricted to designated roads and lanes.

Because of the time limitation involved to coordinate the State and Federal hunting regulations and because of the rapid approach of the hunting season, the U.S. Department of the Interior has concluded that "good cause" exists within the meaning of 5 U.S.C. 553(d)(3), of the Administrative Procedure Act to expedite the implementation of these special regulations. Therefore, the effective date of these special regulations is September 29, 1981.

Note.—The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193), and that the rulemaking would not have "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (Pub. L. 96-354) and 43 CFR, Part 14.

§ 32.22 Special regulations: hunting upland game: for individual refuge areas.

Michigan

Seney National Wildlife Refuge

Hunting shall be in accordance with all applicable State regulations and subject to the following conditions:

1. Ruffed grouse hunting is permitted only on 33,525 acres of the refuge designated as Area B from September 29, 1981 through November 12, 1981.

2. Snowshoe hare hunting is permitted only on 33,525 acres of the refuge designated as Area B from October 1 through November 12, 1981 and on 85,200 acres of the refuge designated as Areas A and B from December 1, 1981 through February 28, 1982.

3. All motorized conveyances are prohibited from traveling on dikes or off established roads and trials. Motorized bikes, all-terrain vehicles, and snowmobiles are not permitted on the refuge.

Indiana

Muscatatuck National Wildlife Refuge

Public hunting of rabbit and quail is permitted on the Muscatatuck National Wildlife Refuge, Indiana only on refuge lands lying east of Jackson-Jennings County line road and south of a line starting ¼ mile north of the SW corner of section 31 running easterly one-half mile, thence north ½ mile and thence east ½ mile to the Pricilla Lake road (excluding the E½, NE¼, SE¼ sec. 31) designated by signs as open to hunting. This area comprising 1,338 acres is delineated on a map available at the refuge headquarters and from the office of the Area Manager.

Minnesota

Big Stone National Wildlife Refuge

Public hunting of Hungarian partridge, cottontail rabbit, jack rabbit, gray squirrel, fox squirrel, and ringnecked pheasant is permitted during the seasons for these species as established by the State of Minnesota. The open area comprises 7,500 acres.

Rice Lake National Wildlife Refuge

Public hunting of ruffed grouse, spruce grouse, gray squirrel, fox squirrel, cottontail rabbit and snowshoe hare is permitted during the seasons for these species as established by the State of Minnesota. The open area comprises about 2,000 acres and is posted as "Public Hunting Area."

Sherburne National Wildlife Refuge

Public hunting of ruffed grouse, ringnecked pheasant, gray squirrel, fox squirrel, cottontail rabbit, jack rabbit and snowshoe hare is permitted during the seasons for these species as established by the State of Minnesota. the open area comprises 21,000 acres and is designated as Areas A and B on the refuge hunting map.

Tamarac National Wildlife Refuge

Public hunting of ruffed grouse, gray squirrel, fox squirrel, cottontail rabbit, jack rabbit and snowshoe hare is permitted during the seasons for these species as established by the State of Minnesota on approximately 30,000 acres. White Earth Indian Reservation regulations apply to Indian people, State and Federal regulations apply to non-Indians on that portion of the refuge which is within the White Earth Indian Reservation boundary. State and/or Federal regulations apply to all persons on that portion of the refuge which is *not* within the White Earth Indian Reservation boundary.

Wisconsin

Horicon National Wildlife Refuge

Public hunting is permitted for ringnecked pheasant concurrent with the opening day of this season as established by the State of Wisconin. The closing date for the pheasant season on the refuge will correspond with the closing date of the State firearms deer season. The open area comprises 16,000 acres.

Illinois, Iowa, Minnesota, Wisconsin

Upper Mississippi Wild Life and Fish Refuge

The public hunting of upland game birds and upland game animals is permitted on the areas designated by signs as "Public Hunting Area." Restricted hunting of these species is also permitted on the areas designated by signs as "Area Closed," except that the Goose Island Closed Area in pool 8 is closed at all times to hunting. The "Public Hunting Areas" comprises 140,000 acres and the "Closed Areas" comprises 46,000 acres.

Hunting shall be subject to the following special conditions:

1. Hunting on designated "Public Hunting Areas" is concurrent with the applicable state seasons during the period from the first day of the earliest fall state game bird or game animal season for that area until the end of the applicable state seasons, or until the next succeeding March 1, whichever occurs first.

2. Hunting on designated "Closed Areas" except for Goose Island Closed Area which is closed to hunting at all times, is permitted concurrent with applicable state seasons during the period from the first day after the close of the last hunting season for ducks for that area, until the end of the applicable state seasons, or until the next succeeding March 1, whichever comes first.

3. The use of dogs for hunting and retrieving game is permitted and encouraged provided the dogs are under control at all times.

4. The use of artificial lights while taking treed raccoons is permitted in accordance with existing state regulations.

Iowa

Mark Twain National Wildlife Refuge (Louisa Division)

Squirrel hunting is permitted on the Keithsburg Unit. The public hunting area, comprising 1,400 acres, is designated by signs, subject to the following conditions:

1. The hunting season will start with the State season and will close on October 15, 1981, inclusive.

2. No dogs may be used to hunt, pursue or retrieve squirrels.

Illinois

Crab Orchard National Wildlife Refuge

Crab Orchard National Wildlife Refuge, Jackson and Williamson Counties, Illinois, will be open for upland game hunting during the dates specified by the State of Illinois for the 1981 Upland Game Season. Hunting of upland game is prohibited from sunrise to 12 noon in the refuge controlled goose hunting areas during the goose hunting season.

Mark Twain National Wildlife Refuge (Clarence Cannon Division)

Hunting of black, grey and fox squirrels is permitted on the Gardner Unit. The hunting area, comprising 4,831 acres, is designated by signs.

1. The hunting season for squirrels will open in accordance with the State season and will close on October 15, 1981, both dates inclusive.

2. Hunters must have in their possession a refuge squirrel hunting permit which will be issued free of charge by the Refuge Office.

Missouri

Mingo National Wildlife Refuge

Squirrel hunting is permitted in areas designated by signs or maps as being open to hunting subject to the following conditions:

1. The open season for hunting squirrels on the refuge extends through September 30, 1981.

2. Under the provisions of 50 CFR 26.32 additional regulations may apply. Contact the Refuge Manager for further information.

3. Dogs are not permitted for squirrel hunting.

4. Hunters are not permitted to enter refuge closed areas.

5. Hunters are permitted on the refuge from one hour before sunrise until one hour after sunset.

§ 32.32 Special regulations; big game; for individual refuge areas.

Michigan

Seney National Wildlife Refuge

Hunting shall be in accordance with all applicable State regulations and subject to the following conditions:

1. Deer may be taken by bow and arrow on 33,525 acres of the refuge designated as Area B, from October 1 through November 12, 1981 and on 85,200 acres of the refuge designated as Areas A and B from December 1 through December 15, 1981.

2. Deer may be taken by gun in Areas A and B, (85,200 acres) from November 15 through November 30, 1981.

3. Deer may be taken by muzzle-loading rifles from December 5 through December 14, 1981 on 85,200 acres of the refuge designated Areas A and B.

4. Bear may be taken by bow and arrow only in area B (33,525 acres) from September 10 through October 31, 1981.

5. Bear may be taken by gun or bow in Areas A and B (85,200 acres) from November 15 through November 30, 1981.

6. Camping is permitted from November 13 through November 30, 1981 west of the Driggs River, but not in the Seney Wilderness Area. A camping permit is required.

7. All motorized conveyances are prohibited from traveling on dikes or off established roads and trails. Motorized bikes, all-terrain vehicles and snowmobiles are not permitted on the refuge.

Shiawassee National Wildlife Refuge

Archery deer hunting is permitted on the entire refuge area from 6:00 AM to 6:00 PM, EST, each day from December 1, 1981 through January 1, 1982. Muzzleloading firearms deer hunting will be permitted on the 1,500-acre Johnson Tract north of the Shiawassee River from December 4, 1981, from 6:00 AM to 6:00 PM, EST, each day. Hunting shall be in accordance with all state regulations covering the hunting of deer, subject to the following conditions:

1. All bow and arrow hunters, and muzzleloading firearms hunters, must possess a valid Federal permit. These permits must be carried by the hunter whenever on refuge lands.

2. Under the provisions of 50 CFR 26.32, additional regulations may apply. Contact the Refuge Manager for further information.

3. All hunters must exhibit their drivers license, hunting license, Federal permit, deer tag, game and vehicle contents to Federal and State officers upon request.

4. Bow and arrow hunters, and muzzleloading firearm hunters, are prohibited from constructing or using any permanent blind, platform or scaffold.

5. All muzzleloading guns must be a .44 caliber or larger using round ball and patch with black powder only.

6. The refuge muzzleloader season will consist of five permit periods each two days in length.

7. No archery deer hunting will occur within the muzzleloader zone during the muzzleloader hunt, December 4, through 13, 1981.

Minnesota

Agassiz National Wildlife Refuge

Public hunting of white-tail deer and moose is permitted concurrent with the firearms seasons as established by the State of Minnesota. The open area comprises approximately 56,500 acres. Construction or use of permanent blinds, platforms or scaffolds is prohibited.

The hunting of moose shall be subject to the following special conditions:

1. All parties hunting Zone 2, which includes Agassiz National Wildlife Refuge, are required to report to the Agassiz Check Station located 11 miles east of Holt, Minnesota, before they begin to hunt.

2. All moose killed in Zone 2, which includes Agassiz Refuge, must be checked at the Agassiz Refuge Check station within 48 hours of the kill.

Big Stone National Wildlife Refuge

Public hunting of white-tailed deer is permitted concurrent with the firearms and archery seasons as established by the State of Minnesota.

Hunting shall be subject to the following special conditions:

1. Construction or use of permanent blinds, platforms or scaffolds is prohibited.

2. During the archery season all bows must be either unstrung or cased at legal sunset.

Rice Lake National Wildlife Refuge

Public hunting of white-tailed deer is permitted with firearms during a portion of the State firearms deer season for the zone subject to the following special conditions:

1. Only those persons in possession of a valid Rice Lake Special Area Firearm Hunt Permit will be allowed to enter and hunt the refuge.

2. All hunters must check in and out of the refuge check point at the beginning and end of each day's hunt.

3. Successful hunters must have their deer checked at the refuge check station prior to transporting it outside the refuge.

4. Construction or use of permanent blinds, platforms or scaffolds is prohibited.

Sherburne National Wildlife Refuge

Public hunting of white-tailed deer is permitted concurrent with shotgun and archery seasons as established by the State of Minnesota.

Hunting shall be subject to the following special conditions:

1. Archery hunting of deer is permitted in Areas A and B (21,000 acres).

2. The taking of antlered bucks by shotgun is permitted in Areas A and B (21,000 acres).

3. The shotgun, either-sex Special Area permit hunt is permitted in Areas A, B and C (28,500 acres). Special Area Firearm Hunt permits must be obtained from the Refuge. Only persons with this permit will be allowed to hunt deer with a firearm during the either-sex hunt.

4. Deer taken during the either-sex permit hunt must be checked in at the refuge check station.

5. Construction or use of permanent blinds, platforms or scaffolds is prohibited.

Tamarac National Wildlife Refuge

Public hunting of white-tailed deer is permitted concurrent with the firearm and archery seasons as established by the State of Minnesota.

Hunting shall be subject to the following special conditions:

1. Construction or use of permanent blinds, platforms or scaffolds is prohibited.

2. White Earth Indian Reservation regulations apply to Indian people, State and/or Federal regulations apply to non-Indians on that portion of the refuge which is within the White Earth Indian Reservation boundary.

3. State and/or Federal regulations apply to all persons on that portion of the refuge which in *not* within the White Earth Indian Reservation boundary.

Wisconsin

Horicon National Wildlife Refuge

Public hunting of white-tailed deer is permitted concurrent with the seasons as established by the State of Wisconsin for the early archery and shotgun seasons only. The open area comprises 16,000 acres. Construction or use of permanent blinds, platforms or scaffolds is prohibited.

Necedah National Wildlife Refuge

Public hunting of white-tailed deer and unprotected mammal species is permitted concurrent with the firearm and archery seasons for these species is established by the State of Wisconsin.

Hunting shall be subject to the following Special Conditions:

1. Only that portion of the refuge located north of Turkey Track Road (12,000 acres) is open to hunting using a bow and arrow during the State *early* bow season.

2. Nearly all of the refuge (38,000 acres) is open to hunting during the State firearms and *late* bow seasons except those areas marked with "Area Closed" signs.

3. Construction or use of permanent blinds, platforms or scaffolds is prohibited.

Iowa, Illinois, Minnesota, Wisconsin

Upper Mississippi Wild Life and Fish Refuge

The public hunting of white-tailed deer by firearm and archery is permitted on areas designated "Public Hunting Area" concurrent with applicable state seasons. Firearm and archery hunting on areas designated as "Area Closed" is permitted, but only during the period from the first day after the close of the last hunting season for ducks until the end of the applicable state season. Construction or use of permanent blinds, platforms or scaffolds is prohibited.

Iowa

DeSoto National Wildlife Refuge

1. Archery hunting of deer will be permitted only on an area comprising 600 acres located on the Southeast portion of the refuge.

2. Hunting season will be consistent with the State archery season.

3. Portable blinds and ladders will be permitted. No permanent tree blinds or stands may be built, nor may any nails, wire or other foreign material be used in any manner. All portable blinds must be removed by the close of the season. No firearms will be permitted on the area.

4. Vehicles will be confined only to designated parking lots. Overnight camping will not be allowed on the area.

5. Only those persons possessing a valid State Bow Hunting Permit will be allowed to enter the area.

Mark Twain National Wildlife Refuge (Louisa Division)

Big game hunting for white-tail deer is permitted on the Big Timber Unit and Turkey and Otter Islands. These areas, designated as public hunter areas by signs, are comprised of 1,760 acres. Special conditions:

1. Big game hunting will be in accordance with all applicable State regulations.

2. No dogs may be used to hunt deer.

Nebraska

DeSoto National Wildlife Refuge

1. Archery hunting of deer will be permitted only on an area comprising 1,000 acres located on the west side of the Missouri River.

2. Hunting will be permitted through October 31, 1981 and December 7, 1981 through December 31, 1981, all dates inclusive.

3. Portable blinds and ladders will be permitted. No permanent tree blinds or stands may be built, nor may any nails, wire or other foreign material be used in any manner. All portable blinds must be removed by the close of the season. No firearms will be permitted on the area.

4. Vehicles will be confined only to designated parking lots. Overnight camping will not be allowed on the area.

5. Only those persons possessing a valid State Bow Hunting Permit will be allowed to enter the area.

Special Muzzleloader Hunting of Deer

1. Muzzleloader hunting of deer will be permitted on an area comprising approximately 3,350 acres located in the central portion of the refuge.

2. Hunting season will be December 12, 1981 through December 16, 1981. Both dates are inclusive.

3. A total of 100 special permits will be issued for the hunt by the Nebraska Game and Parks Commission. Only those persons possessing a valid State permit will be allowed to enter the area. Muzzleloader rifles will be the only weapons allowed and deer of either sex will be the only legal wildlife species that may be taken during the hunt. Discharging firearms from or across all roads open to vehicle traffic including adjacent rights-of-way is prohibited. Camping and pets are not permitted on the refuge.

4. Entry to the open area will be permitted one hour before shooting hours. Shooting hours will be ½ hour before sunrise to ½ hour after sunset. All permit holders and vehicles must be out of the designated hunting area no later than one hour after sunset.

5. Vehicles will be confined to designated roads, parking areas, road shoulders and field access approaches. Parking will not be permitted on asphalt roads.

6. Parking will be permitted along graveled roads.

7. Portable blinds and ladders will be permitted. No permanent blinds or stands may be built, nor may any nails, wire or other foreign materials be used. All portable blinds must be removed by the close of the season.

Illinois

Crab Orchard National Wildlife Refuge

Crab Orchard National Wildlife Refuge, Jackson and Williamson Counties, Illinois will be open to hunting of white-tailed deer concurrent with shotgun and bow and arrow hunt dates as specified by the State of Illinois for the 1981 Deer Season. In Areas I and III (23,000 acres), hunting is permitted from ground level only. In Area II (21,000 acres), the following conditions apply:

1. Each hunter must possess a special permit issued by the Illinois Department of Conservation showing the three-day season he/she is to hunt.

2. All hunters must check in at the refuge fire station prior to hunting.

3. All hunters must comply with all special conditions listed on a handout furnished to them at the time of check-in.

Mark Twain National Wildlife Refuge (Clarence Cannon Divison)

Hunting of white-tailed deer with shotgun is permitted on the Gardner Unit of Mark Twain National Wildlife Refuge, Illinois. The hunting area, comprising 4,831 acres is designated by signs. Hunting shall be in accordance with all applicable State regulations subject to the following special conditions:

1. The hunting dates will be November 20, 21, and 22, 1981, from 6:30 a.m., to 3:00 p.m. (CST).

2. A valid state-issued shotgun deer permit with Clarence Cannon National Refuge designated on it, will serve as authorization to enter the public hunting area.

3. Successful hunters are required to check their deer through the Adams County Check Station.

Missouri

Mingo National Wildlife refuge

Hunting of deer and turkey is permitted on areas designated by signs or on available maps as being open to hunting, subject to the following conditions:

1. Hunting with bows and arrows only is permitted.

2. Hunters must check in and out at the check point.

3. Portable tree stands are permitted, but must be identified with hunter's name and address. Tree stands nailed or permanently attached to trees are prohibited.

4. Hunters are not permitted to enter those areas shown as being closed on the refuge hunting map.

5. Hunters are permitted on the refuge from one hour before sunrise until one hour after sunset.

Swan Lake National Wildlife Refuge

Use of historical weapons for hunting of deer is permitted on designated areas comprising 3,550 acres within Swan Lake National Wildlife Refuge, Missouri.

1. Hunting with longbows, compound bows, crossbows and muzzleloading firearms firing a single projectile no smaller than .40 caliber are the only legal weapons for this hunt. Hunters are not limited to one type of weapon. Revolvers or rifles capable of being fired more than once without reloading are not permitted. Single shot pistols may be used if .40 caliber or larger.

2. A total of 175 special permits will be issued for the October 10–12 hunt by the Missouri Department of Conservation. Only those persons possessing a valid permit will be allowed to enter the open area.

3. Appropriate State hunting permits are required. Permits cannot be purchased at Swan Lake Wildlife Area.

4. All hunters must check in at the area check station and present both the Managed Deer Hunt Permit and the Missouri Deer Hunting Permit (firearms or archery).

5. Each hunter will be issued an arm band which must be worn on an outer garment while hunting in the area. This requirement is for identification and safety while hunting.

6. Deer of any sex and age may be taken during legal shooting hours which are one-half hour before sunrise until sunset. No other wildlife is to be molested. Only one deer per person may be taken in this hunt.

7. Deer harvested in the Swan Lake National Wildlife Refuge must be taken to the check station on the day killed.

8. Primitive-type camping will be pemitted in a designated location near the area headquarters. No special facilities are available. Fires are prohibited except in designated areas.

9. Travel within the Swan Lake National Wildlife Refuge by motor vehicle, including motor bikes, is restricted to established roads and trails. Parking is permitted only in designated parking areas.

10. Portable tree stands are permitted, but must be removed each day. Tree stands nailed or permanently attached to trees are prohibited.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28131 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 32

National Wildlife Refuges in New Jersey, New York, and Pennsylvania; Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: It has been determined that the opening to hunting of certain National Wildlife Refuges is compatible with the objective for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. These special regulations describe the conditions under which hunting will be permitted on portions of certain National Wildlife Refuges in New Jersey, New York, and Pennsylvania.

EFFECTIVE DATES: September 29, 1981 through February 28, 1982.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the following addresses or telephone numbers:

Norman R. Chupp, Area Manager, U.S. Fish and Wildlife Service, 100 Chestnut Street, Room 310, Harrisburg, Pennsylvania 17101, 717–782–3743.

Anthony Leger, Assistant Refuge Manager, Barnegat National Wildlife Refuge, P.O. Box 544, 686 East Bay Avenue, Barnegat, New Jersey 08005, 609–698–1387. Under administration of Brigantine National Wildlife Refuge.

Gaylord Inman, Refuge Manager, Brigantine National Wildlife Refuge, Great Creek Road, P.O. Box 72, Oceanville, New Jersey 08231, 609–652–1665.

Edwin Chandler, Refuge Manager, Iroquois National Wildlife Refuge, RFD #1, Basom, New York 14003, 716–948–5445.

Grady Hocutt, Refuge Manager, Montezuma National Wildlife Refuge, RD #1, Box 1411, Seneca Falls, New York 13148, 315–568–5987.

Bill McCoy, Refuge Manager, Erie National Wildlife Refuge, RD #2, Box 191, Guys Mills, Pennsylvania 16327, 814–789–3585.

SUPPLEMENTARY INFORMATION: The author of this document is Edward S. Moses, Refuges and Wildlife Resources, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158, 617–965–5100, X–222.

Hunting on portions of the following refuges shall be in accordance with applicable State and Federal seasons and regulations, subject to additional special regulations and conditions indicated. Portions of refuges which are open to hunting are designated by signs and/or shown on maps. Under the provisions of 50 CFR 26.32, additional regulations may apply. Contact the Refuge Manager for further information. Special conditions applying to individual refuges and maps are available at Refuge Headquarters or from the office of the Area Manager.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for

public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires: (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established, and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation. The recreational use authorized by these regulations will not interfere with the primary purposes for which the following National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Because of the time limitation involved to coordinate the State and Federal hunting regulations and because of the rapid approach of the hunting seasons, the U.S. Department of the Interior has concluded that "good cause" exists within the meaning of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act to expedite the implementation of these special regulations. Effective date is September 1, 1981.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

New Jersey

Barnegat National Wildlife Refuge

Public hunting of rails, gallinules, waterfowl, and coots, is permitted during established State and Federal seasons on only those areas designated by signs as open to hunting. Hunting shall be subject to the following special conditions:

(1) On opening days, Saturdays, and holidays, a Federal permit will be required.

(2) No permanent blinds or pit blinds may be constructed.

(3) The use of steel shot ammunition on the refuge hunting area is required—shotshell limit 25 rounds per hunter per day. No person may have more than 25 steel shotshells or any lead shotshells in their possession while hunting waterfowl.

(4) Hunters, when requested by Federal or State enforcement officers, must display for inspection all game, hunting equipment, and ammunition.

Brigantine National Wildlife Refuge

Public hunting of rails, gallinules, waterfowl, and coots, is permitted during established State and Federal seasons on those areas designated by signs as open to hunting. Hunting shall be subject to the following special conditions:

(1) Steel shotshells are required for shotguns used to hunt migratory waterfowl during the State waterfowl hunting season. Persons may not possess lead shotshells while waterfowl hunting.

(2) Hunters when requested by Federal or State enforcement officers, must display for inspection all game, hunting equipment and ammunition.

(3) Hunting on Unit 3 during the waterfowl season is open to the public during the first half of the split season and following the second Saturday of the second half of the split season. Unit 3 is restricted to Certified Young Waterfowlers Program Trainees from the opening day of the second half of the split season through the second Saturday of the second half of the split season.

New York

Iroquois National Wildlife Refuge

Public hunting of migratory game birds is permitted in designated areas. Hunting shall be subject to the following special conditions:

(1) Waterfowl:

(a) Waterfowl hunting is by permit only.

(b) Hunting is permitted on Monday, Tuesday, Thursday, and Saturday.

(c) Permits must be issued in advance for opening day and the first two Saturdays. On other hunt days permits are issued on the basis of a daily drawing held prior to legal opening time. On prior permit days, hunters will draw for hunting sites on the morning of the hunt. On other hunt days, hunters will have a choice of available hunting sites as their names are drawn.

(d) All hunting ends each day at 12 noon local time, and all hunters must check out and present harvested game at the permit station on Lewiston Road, not later than 1 p.m. local time.

(e) No loaded guns are permitted beyond a 50-foot radius of the hunting stand marker and no more than two hunters are permitted to each stand.

(f) Hunters will be limited to 15 steel shotshells not larger than #1, including participants in the Young Waterfowlers Program. Possession of lead shotshells is not permitted.

(g) Disorderly conduct, intoxication, "sky busting" or otherwise unsportsmenlike conduct will not be tolerated and the permittee will be ejected from the area.

(h) A hunter who leaves his stand must have permission from official personnel to return.

(i) No person shall use or hunt from a boat.

(j) Hunters, when requested by Federal or State enforcement officers, must display for inspection all game, hunting equipment, and ammunition.

(k) A minimum of six (6) decoys will be used at each stand. The decoys will be furnished by the hunter(s).

(2) Woodcock and Crow:

(a) Hunting of woodcock and crow is permitted during the regular State open seasons, except on areas designated by signs as closed. Hunting areas are shown on maps available at Refuge Headquarters.

Montezuma National Wildlife Refuge

Public hunting of migratory waterfowl is permitted during the regular State season on the areas designated by signs as open to waterfowl hunting. The waterfowl hunting area known as the Tschache Pool comprises 1,340 acres. Hunting shall be subject to the following special conditions:

(1) Hunting is permitted on Tuesdays, Thursdays, and Saturdays.

(2) Steel shotshells will be used for all waterfowl hunting. Hunters will be limited to 15 steel shotshells each, with shot size no larger than #1 fine shot. No person shall have lead shot in their possession during the hunt.

(3) Reservations for permits will be selected by random drawing. Hunting will be allowed on the designated days from the opening of the State season to the end of the first part of a split season or until the third Saturday in November—whichever comes first. Successful applicants must appear in person at the refuge waterfowl check station prior to one hour before legal shooting time on the date reserved. Unreserved and forfeited permits will be awarded by a drawing on the morning of the hunt to hunters without reservations.

(4) The first Saturday of the season will be reserved for the Young Waterfowlers Training Program hunt. If numbers warrant, a Sunday will also be set aside.

(5) A person with reservations may bring no more than one companion.

(6) All hunting ends each hunting day at 12 noon local time, and all hunters must check out at the waterfowl check station no later than 1 p.m. local time.

(7) Hunters when requested by Federal or State enforcement officers, must display for inspection all game, hunting equipment, and ammunition.

Pennsylvania

Erie National Wildlife Refuge

Public hunting of migratory game birds, including crow, is permitted during the regular State migratory game bird season subject to the following special conditions:

(1) Field possession of migratory game birds is prohibited in areas of the refuge closed to migratory game bird hunting. Such hunting is permitted only on the designated area as shown on maps available at Refuge Headquarters.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28132 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 32

National Wildlife Refuges in New Jersey, New York and Pennsylvania; Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: It has been determined that the opening to hunting of certain National Wildlife Refuges is compatible with the objective for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. These special regulations describe the conditions under which hunting will be permitted on portions of certain National Wildlife Refuges in New Jersey, New York and Pennsylvania.

EFFECTIVE DATES: September 29, 1981 through February 28, 1982.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the following addresses or telephone numbers:

Norman R. Chupp, Area Manager, U.S. Fish and Wildlife Service, 100 Chestnut Street, Room 310, Harrisburg, Pennsylvania,17101, 717–782–3743.

John L. Fillio, Refuge Manager, Great Swamp National Wildlife Refuge, R.D. 1, Box 148, Basking Ridge, New Jersey 07920, 201–647–1222.

Edwin Chandler, Refuge Manager, Iroquois National Wildlife Refuge, R.F.D. 1, Basom, New York, 14003, 716–948–5445.

Grady Hocutt, Refuge Manager, Montezuma National Wildlife Refuge, R.D. 1, Box 141, Seneca Falls, New York 13148, 315–568–5987.

Bill McCoy, Refuge Manager, Erie National Wildlife Refuge, R.D. 2, Box 191, Guys Mills, Pennsylvania 16327, 814–789–3585.

SUPPLEMENTARY INFORMATION: The author of this document is Edward S. Moses, Refuges and Wildlife Resources, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158, 617–965–5100, X–222.

Hunting on portions of the following refuges shall be in accordance with applicable State and Federal seasons and regulations, subject to additional special regulations and conditions indicated. Portions of refuges which are open to hunting are designated by signs and/or shown on maps. Under the provisions of 50 CFR 26.32, additional regulations may apply. Contact the Refuge Manager for further information. Special conditions applying to individual refuges and maps are available at Refuge Headquarters or from the office of the Area Manager.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires: (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established, and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation. The recreational use authorized by these regulations will not interfere with the primary purposes for which the following National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Because of the time limitation involved to coordinate the State and Federal hunting regulations and because of the rapid approach of the hunting seasons, the U.S. Department of the Interior has concluded that "good cause" exists within the meaning of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act to expedite the implementation of these special regulations. Effective date is September 1, 1981.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

New York

Iroquois National Wildlife Refuge

Public hunting of upland game birds and small game mammals, including opossums, red squirrels, raccoon, and woodchucks is permitted during the respective State seasons except on areas designated by signs as closed. Hunting shall be subject to the following special conditions:

(1) A seasonal permit is required for the nighttime hunting of raccoon. Permits may be obtained at the refuge office.

Montezuma National Wildlife Refuge

The public hunting of gray squirrels, cottontail rabbits, raccoons and foxes is permitted during the regular State seasons except on areas designated by signs as closed.

A permit is required for night hunting of raccoon. The number of permits issued for night hunting of raccoon shall be limited to five (5).

Hunting shall be in accordance with all State regulations governing the hunting of the above mammals.

Pennsylvania

Erie National Wildlife Refuge

Public hunting of rabbits, woodchucks, raccoons, squirrels, grouse, quail, pheasants, skunks, oppossums, and foxes, is permitted during the regular State small game and furbearer seasons on portions of the Erie National Wildlife Refuge. Maps showing the open hunting areas are available for Refuge Headquarters.

Hunting shall be subject to the following special conditions: That portion of the refuge situated between Pennsylvania Routes 27 and 173 is closed to hunting with firearms until the opening of the State firearms deer season. Hunting of fox and raccoon is permitted only on that portion of the refuge located north of Route 27. All fox and raccoon hunters must have a permit in possession when hunting on the refuge. Permits may be secured at the Refuge Headquarters.

§ 32.32 Special regulations: big game; for individual wildlife refuge areas.

New Jersey

Great Swamp National Wildlife Refuge

Public hunting of deer of either sex with shotguns is permitted, except on areas designated by signs as closed, during the period of December 7–9, 1981, December 17–19, 1981, and January 8

and 9, 1982. Hunting of deer with firearms shall be subject to the following special conditions:

(1) Deer may be taken throughout the hunt between the hours of 7 a.m. E.S.T. and 5 p.m. E.S.T. Participation will be limited to the 600 hunter permittees randomly selected for the special Great Swamp hunt. Only 300 hunters will be allowed at any given time on each day during the hunt period. Armbands and parking area permits will be issued and must be displayed as designated. Armbands and permits must be surrendered prior to departure from the refuge. Hunters must furnish and wear a minimum of 200 square inches of blaze or hunter orange in accord with State requirements. All deer taken must be checked out at the refuge check station. Vehicles are restricted to public roads and areas designated by parking permits.

(2) A shotgun not smaller than 12 gauge will be permitted for hunting deer, and buckshot not smaller than Number 4 nor larger than Number 000 will be permitted in possession during the hunt. Target practice or test firing is not permitted, and guns must be unloaded when in areas posted as "closed". Baiting or hunting with the aid of bait is prohibited.

Regulations, summaries, maps delineating open hunting areas, and other materials are available at Refuge Headquarters.

The refuge will be closed to the general public during the hunting periods, December 7–9, 1981, December 17–19, 1981, and January 8 and 9, 1982.

New York

Iroquois National Wildlife Refuge

Public hunting of deer is permitted during the regular State open seasons except on areas designated by signs as closed.

Hunting area maps are available at Refuge Headquarters.

Montezuma National Wildlife Refuge

Archery hunting for deer on portions of the Montezuma National Wildlife Refuge, is permitted from the first weekday of November and extends through the last day of the designated State gun season for deer in this zone.

Hunting shall be subject to the following special conditions:

(1) Hunting is permitted Monday through Friday.

(2) Only longbows and compound bows may be used, gun hunting and firearms possession is prohibited.

(3) During the period from the first weekday in November until the start of the State shotgun season for deer, archers may take deer of either sex on the refuge.

(4) Upon commencement of the State shotgun season for deer in this zone, only legally antlered deer may be taken on the refuge unless the archer possesses a valid party permit for deer management unit 86.

(5) Archery season will open in the Tschache Pool Area (all sections north of the New York State Thruway (I–90) and west of New York State Route 89, from the point where Route 89 crosses over the thruway in a northerly direction) on the first weekday following the close of the refuge waterfowl season.

(6) Areas closed to archery hunting include open water and posted closed areas.

(7) Successful hunters must check their deer at refuge headquarters.

Pennsylvania

Erie National Wildlife Refuge

Public hunting of deer is permitted during the regular State deer seasons. The open hunting area is shown on maps available at Refuge Headquarters. Hunting shall be subject to the following special conditions:

(1) All hunters except archery hunters, shall be required to wear a minimum of 400 total square inches of a safety fluorescent orange color material

(2) A permit is required for all deer hunting. Permits may be secured at Refuge Headquarters and must be returned via mail or in person within 10 days of the close of the respective season. Failure to return the permit will result in loss of hunting privileges the following year. Refuge hunters are prohibited from engaging in target practice or random shooting in all refuge hunts. The use of alcoholic beverages is not permitted on the refuge when visiting for the purpose of hunting.

All hunting area maps are available at Refuge Headquarters.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28136 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 32

National Wildlife Refuges in North Carolina and South Carolina; Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: It has been determined that the opening of certain national wildlife refuges in North Carolina and South Carolina to hunting is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. This document establishes special regulations effective for the upcoming migratory game bird hunting seasons. The name of each affected refuge and the special regulations for each refuge are set forth below.

EFFECTIVE DATES: September 29, 1981.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the address or telephone number listed below:

William C. Hickling, Area Manager, U.S. Fish and Wildlife Service, Plateau Building, Room A–5, 50 South French Broad Ave., Asheville, N.C. 28801. Telephone 704–258–2850, Ext. 321.

Steven W. Frick, Refuge Manager, Mattamuskeet (and Swanquarter) National Wildlife Refuge, Rt. 1, Box N–2, Swanquarter, N.C. 27885. Telephone 919–926–4021.

George R. Garris, Refuge Manager, Cape Romain National Wildlife Refuge, Rt. 1, Box 191, Awendaw, S.C. 29429. Telephone 803–928–3368.

SUPPLEMENTARY INFORMATION: The author of this document is Robin H. Fields, Asheville Area Office; U.S. Fish and Wildlife Service, Plateau Building, Room A–5, 50 South French Broad Ave., Asheville, North Carolina 28801, 704–258–2850, Ext. 392.

Hunting on portions of the following refuges shall be in accordance with applicable State and Federal regulations, subject to additional Special Regulations and conditions as indicated. Portions of the refuges which are open to hunting are designated by signs and/or delineated on maps. Special conditions apply to individual refuges and maps are available at the refuge headquarters listed above.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires that: (1) any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) funds are available for the development, operation, and maintenance of the permitted forms of recreation. The recreational use authorized by these regulations will not interfere with the primary purposes for

which these refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Impact Statement on the Operation of the National Wildlife Refuge System published in November, 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Because of the time limitation involved to coordinate the State and Federal hunting regulations and because of the rapid approach of the hunting seasons, the U.S. Department of the Interior has concluded that "good cause" exists within the meaning of 5 U.S.C. 553(d)(3), of the Administrative Procedure Act to expedite the implementation of these special regulations. Therefore the effective date is September 29, 1981.

Note.—The Department of the Interior has determined that this document is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193) and that the rulemaking would not have a "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act and 43 CFR Part 14.

§ 32.12 Special regulations; migratory game birds; for individual refuge areas.

North Carolina

Mattamuskeet National Wildlife Refuge

Duck and coot hunting will be permitted on approximately 4,000 acres of Mattamuskeet National Wildlife Refuge. Hunting parties will be chosen by a lottery. Each party will be charged a fee of $10.

All hunters must check in by 5:00 a.m. and out by 1:00 p.m. at the refuge check station. Shooting hours will be ½ hour before sunrise to 12:00 noon for the regular hunt. Shoot hours for the youth hunt will be 1:00 p.m. until sunset on the first day and ½ hour before sunrise until 12:00 noon on the second day. Hunting is restricted to the assigned blind. Only crippled birds may be shot from outside the blind. Hunters will be restricted to the use of and possession of steel (non-toxic) shot shells only. Each hunter may possess or shoot only 15 shells. Alcoholic beverages will be prohibited within the hunt area. Hunters under 16 years of age must be under the close supervision of an adult.

Swanquarter National Wildlife Refuge

Waterfowl hunting will be permitted on approximately 7,055 acres of Swanquarter National Wildlife Refuge. North Carolina state seasons and bag limits will apply. Hunters may use or possess only steel (non-toxic) shot shells. Only temporary blinds that are removed daily will be permitted. Shotguns may not be fired outside the designated hunt area except to kill crippled waterfowl.

South Carolina

Cape Romain National Wildlife Refuge

Rail hunting will be permitted on approximately 12,000 acres of the Cape Romain National Wildlife Refuge. The hunting season will be from the opening day of the State season until October 31, 1981. Dogs will be permitted only in the hunting area. Hunters under 16 years of age must be under the close supervision of an adult.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas, generally, which are set forth in Title 50 Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28128 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 32

National Wildlife Refuges in North Dakota; Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: It has been determined that the opening to hunting of certain National Wildlife Refuges is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. These special regulations describe the conditions under which hunting will be permitted on portions of certain National Wildlife Refuges in North Dakota.

EFFECTIVE DATES: September 29, 1981 through March 31, 1982.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the following addresses or telephone numbers:

Gilbert E. Key, Area Manager, U.S. Fish and Wildlife Service, 1500 Capitol Ave., Bismarck, North Dakota 58501, 701–255–4011, X–401.

John R. Foster, Refuge Manager, Arrowwood, Long Lake and Chase Lake National Wildlife Refuges, Rural Route 1, Pingree, North Dakota 58476, 701–285–3341.

Ronald D. Shupe, Refuge Manager, Audubon and Lake Nettie National Wildlife Refuges, Rural Route 1, Coleharbor, North Dakota 58531, 701–442–5474.

John L. Venegoni, Refuge Manager, Des Lacs, Lostwood and Lake Zahl National Wildlife Refuges, P.O. Box 578, Kenmare, North Dakota 58746, 701–385–4046.

David E. Janes, Refuge Manager, Lake Alice National Wildlife Refuge, P.O. Box 908, Devils Lake, North Dakota 58301, 701–662–2924.

Darold T. Walls, Refuge Manager, J. Clark Salyer National Wildlife Refuge, Upham, North Dakota 58789, 701–768–2548.

David G. Potter, Refuge Manager, Tewaukon National Wildlife Refuge, Rural Route 1, Cayuga, North Dakota 58013, 701–724–3598.

Maurice B. Wright, Refuge Manager, Upper Souris National Wildlife Refuge, Rural Route 1, Foxholm, North Dakota 58738, 701–468–5468.

SUPPLEMENTARY INFORMATION: The author of this document is Merle O. Bennett, Bismarck Area Office, U.S. Fish and Wildlife Service, 1500 Capitol Ave., Bismarck, North Dakota 58501, 701–255–4011, X–417.

Hunting on portions of the following refuges shall be in accordance with applicable State and Federal seasons and regulations, subject to additional special regulations and conditions as indicated. Portions of refuges which are open to hunting are designated by signs and/or delineated on maps. Special conditions applying to individual refuges and maps are available at refuge headquarters or from the Office of the Area Manager (addresses listed above).

The Refuge Recreation Act of 1962 (16 U.S.C. 460K) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were established. In addition, the Refuge Recreation Act requires that: (1) such recreational use will not interfere with the primary purposes for which the area was established, and (2) funds are available for the development, operation, and maintenance of the permitted forms of recreation. The recreational use authorized by these regulations will not interfere with the primary purposes for which these refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the operation of the National Wildlife Refuge System published November

1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Note.—The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193), and that the rulemaking would not have "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (Pub. L. 96-354) and 43 CFR Part 14.

§ 32.32 Special regulations: big game; for individual wildlife refuge areas.

North Dakota

Arrowwood National Wildlife Refuge

Archery deer hunting and firearms deer hunting are permitted on designated areas of the Refuge, in accordance with the following special conditions:

(1) Archery deer hunting is closed from the day before the waterfowl hunting season until the day following the firearm deer season.

(2) Special refuge hunting permits are required the first 2½ days of the firearm season.

(3) Fox may be taken by deer license holders during the firearm deer season.

Chase Lake National Wildlife Refuge

Archery deer hunting and firearms deer hunting are permitted on the entire refuge, in accordance with the following special conditions:

(1) Archery deer hunting is closed from the day before the waterfowl hunting season until the day following the firearms deer season.

Long Lake National Wildlife Refuge

Archery deer hunting and firearms deer hunting are permitted on designated areas of the refuge, in accordance with the following special conditions:

(1) Archery deer hunting is closed from the day before the waterfowl huntng season until the day following the firearms deer season.

Slade Lake National Wildlife Refuge

Archery deer hunting and firearms deer hunting are permitted on designated areas of the refuge, in accordance with the following special conditions:

(1) Archery deer hunting is closed from the day before waterfowl hunting season until the day following the firearms deer season.

Audubon National Wildlife Refuge

Archery deer hunting and firearms deer hunting are permitted on designated areas of the refuge, in accordance with the following special conditions:

(1) Archery deer hunting is closed until the day following the firearms deer season.

(2) Special refuge hunting permits are required the first 2½ days of the firearms deer season.

(3) All islands in Lake Audubon within the refuge are closed to the taking of deer during the firearms season.

Lake Nettie National Wildlife Refuge

Archery deer hunting and firearms deer hunting are permitted on designated areas of the refuge, in accordance with the following special conditions:

(1) Archery deer hunting is closed until the day following the firearms deer season.

Des Lacs National Wildlife Refuge

Archery deer hunting and firearms deer hunting are permitted on designated areas of the refuge, in accordance with the following special conditions:

(1) Archery deer hunting is closed from the day before the waterfowl hunting season until the day following the State firearms deer season.

Lostwood National Wildlife Refuge

Archery deer hunting and firearms deer hunting are permitted on designated areas of the refuge, in accordance with the following special conditions:

(1) Archery deer hunting is closed from the day before the waterfowl hunting season until the day following the State firearms deer season.

Lake Zahl National Wildlife Refuge

Archery deer hunting is permitted on designated areas of the refuge, in accordance with the following special conditions:

(1) Archery deer hunting is closed from the day before the waterfowl hunting season until the day following the State firearms deer season.

J. Clark Salyer National Wildlife Refuge

Archery deer hunting and firearms deer hunting are permitted on the entire refuge, in accordance with the following special conditions:

(1) Archery deer hunting is closed during the waterfowl hunting season on all portions of the refuge except that area south of the Upham-Willow City road.

(2) Special refuge hunting permits are required the first 2½ days of the firearms deer season.

Lake Alice National Wildlife Refuge

Archery deer hunting and firearms deer hunting are permitted on designated areas of the refuge, in accordance with the following special conditions:

(1) Archery deer hunting is closed from the day before the waterfowl hunting season until the day following the State firearms deer season.

(2) The special archery hunting unit, including access roads and parking areas, is closed to all entry during the waterfowl hunting season.

(3) Firearms deer hunting is permitted only on the general public hunting unit.

Tewaukon National Wildlife Refuge

Archery deer hunting is permitted on designated areas of the refuge, in accordance with the following conditions:

(1) Archery deer hunting is closed until the day following the State firearms deer season.

Upper Souris National Wildlife Refuge

Archery deer hunting and firearms deer hunting are permitted on the entire refuge, in accordance with the following special conditions:

(1) Archery deer hunting is closed from the day before waterfowl hunting season until the day following the firearms deer season.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Lake Alice National Wildlife Refuge

Hunting of geese, ducks, coots and mergansers is permitted on designated areas of the refuge, in accordance with the following special conditions:

(1) Waterfowl hunting is permitted only on the general public hunting unit.

(2) Retrieval zones are designated between the hunting areas and the closed areas for the retrieval of dead or wounded game only. The use or possession of firearms within the retrieval zone is prohibited.

J. Clark Salyer National Wildlife Refuge

Hunting of geese, ducks, coots and mergansers is permitted on nine designated public hunting areas of the refuges.

§ 32.22 Special Regulations; upland game; for individual wildlife refuge areas.

Arrowwood National Wildlife Refuge

Hunting of upland game birds is permitted on designated areas of the refuge, during the State designated late season.

Lake Alice National Wildlife Refuge

Hunting of upland game birds is permitted on designated areas of the refuge, in accordance with the following special conditions:

(1) Pheasant, grouse and partridge hunting is permitted only on the designated public hunting unit of the refuge.

(2) Pheasant hunting will be permitted only during the State early pheasant hunting season.

Tewaukon National Wildlife Refuge

Hunting of upland game birds is permitted on designated areas of the refuge, in accordance with the following special conditions:

(1) The pheasant hunting season opens the Saturday following the close of the firearms deer season.

(2) Pheasant hunting only is permitted on that portion of the refuge west of County Road #12.

J. Clark Salyer National Wildlife Refuge

Hunting of upland game birds is permitted on designated areas of the refuge, in accordance with the following special conditions:

(1) Nine designated public hunting areas are open to the hunting of all upland game birds during the regular State seasons.

(2) In addition, grouse and partridge hunting is permitted on that portion of the refuge south of the Upham-Willow City road during the entire State season.

(3) Pheasant, grouse and partridge hunting is permitted on the entire refuge following the deer firearms season.

Lostwood National Wildlife Refuge

Hunting of upland game birds is permitted on designated areas of the refuge, in accordance with the following special conditions:

(1) Hunting of grouse and partridge is closed on that portion of the refuge south of Highway 50 during the deer firearms season.

(2) Grouse and partridge hunting is permitted north of Highway 50, only following the close of the deer firearms season.

(3) The refuge is closed to the hunting of pheasants.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28136 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-35-M

50 CFR Parts 32 and 33

National Wildlife Refuges in Montana and Wyoming; Hunting and Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: It has been determined that the opening to hunting and sport fishing of certain National Wildlife Refuges is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. These special regulations describe the conditions under which hunting and sport fishing will be permitted on portions of certain National Wildlife Refuges in Montana and Wyoming.

EFFECTIVE DATES: September 29, 1981 through July 15, 1981.

FOR FURTHER INFORMATION CONTACT: The Area Manager, or appropriate Refuge Manager, at the address or telephone number listed below:

Wally Steucke, Area Manager, U.S. Fish and Wildlife Service, Room 3035, Federal Building, 316 North 26th Street, Billings, Montana 59101. Telephone (406) 657-6115.

Robert Pearson, Refuge Manager, Benton Lake National Wildlife Refuge, P.O. Box 450, Black Eagle, Montana 59414. Telephone (406) 727-7400.

Eugene Sipe, Refuge Manager, Bowdoin National Wildlife Refuge, P.O. Box J, Malta, Montana 59538. Telephone (406) 654-2863.

Ralph Fries, Refuge Manager, Charles M. Russell, UL Bend, and Lake Mason National Wildlife Refuges, P.O. Box 110, Lewistown, Montana 59457. Telephone (406) 538-8706.

Robert Twist, Refuge Manager, Lee Metcalf National Wildlife Refuge, P.O. Box 257, Stevensville, Montana 59870. Telephone (406) 777-5552.

Larry C. Peterson, Project Leader, Northwest Montana Fishery Center, 780 Creston Hatchery Road, Kalispell, Montana 59901. Telephone (406) 755-7870.

Robert C. Brown, Refuge Manager, National Bison Range, Moiese, Montana 59824. Telephone (406) 644-2354.

Eugene D. Stroops, Refuge Manager, Red Rock Lakes National Wildlife Refuge, Monida Star Route, Box 15, Lima, Montana 59739. Telephone (406) 276-3347.

Jay Bellinger, Refuge Manager, Medicine Lake National Wildlife Refuge, Medicine Lake, Montana 59247. Telephone (406) 789-2305.

John E. Wilbrecht, Refuge Manager, National Elk Refuge, Box C, Jackson, Wyoming 83001. Telephone (307) 733-9212.

SUPPLEMENTARY INFORMATION: The author of this document is Jay Hamernick, Billings Area Office, U.S. Fish and Wildlife Service, Federal Building, Room 3035, 316 North 26th Street, Billings, MT 59101, (406) 657-6115.

General

Hunting and sport fishing on portions of the following refuges shall be in accordance with applicable State and Federal seasons and regulations, subject to additional special regulations and conditions as indicated. Portions of refuges which are open to hunting and sport fishing are designated by signs and/or delineated on maps. Special conditions applying to individual refuges and maps are available at refuge headquarters or from the office of the Area Manager (addresses listed above).

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires: (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation and maintenance of the permitted forms of recreation.

The recreational uses authorized by these regulations will not interfere with the primary purposes for which the following National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November, 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Because of the time limitation involved to coordinate the State and Federal hunting regulations and because of the rapid approach of the hunting and fishing seasons, the U.S. Department of the Interior has concluded that "good cause" exists within the meaning of 5 U.S.C. 553(d)(3), of the Administrative Procedure Act to expedite the implementation of these special regulations. The effective date is September 29, 1981.

Note.—The Department of the Interior has determined that this document is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193) and that the rulemaking would not have a "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (Pub. L. 96-354) and 43 CFR Part 14.

§ 32.12 Special Regulations: Migratory game birds for individual wildlife refuge areas.

Montana

Benton Lake National Wildlife Refuge

Hunting of geese, ducks, coots and mergansers is permitted on approximately 4,100 acres of the Benton Lake National Wildlife Refuge, Black Eagle, Montana.

The following special regulations apply:

1. The refuge will be open to hunting from one-half hour before sunrise to 12:00 noon on the first two days of the general waterfowl season only. Thereafter, hunting hours will be from one-half hour before sunrise to sunset each day.

2. Refuge roads and dikes are closed to hunting. Hunters with retrievers or boats may hunt from the specifically posted 5/6 dike area.

3. Access to and from refuge hunting areas will be on designated roadways only. (This prohibits access from the refuge onto adjacent private lands.)

4. Vehicle travel will be restricted to designated roadways and parking will be restricted to designated parking areas.

5. Hunters are prohibited from constructing permanent blinds on the refuge.

6. Boats without motors may be used in conjunction with waterfowl hunting activities.

7. Hunting of migratory game birds closes November 30.

Bowdoin National Wildlife Refuge

Hunting of migratory game birds is permitted on approximately 6,200 acres of the Bowdoin National Wildlife Refuge, Malta, Montana.

Charles M. Russell National Wildlife Refuge

Hunting of migratory game birds is permitted on approximately 750,000 acres of the Charles M. Russell and UL Bend National Wildlife Refuges, Lewistown, Montana. Vehicle travel is permitted only on designated roads and trails. All off-road vehicle traffic is prohibited.

Lake Mason National Wildlife Refuge

Hunting of migratory game birds is permitted on approximately 1,600 acres of Lake Mason National Wildlife Refuge, Lewistown, Montana.

Vehicle parking is permitted only in designated areas. No motorized watercraft is allowed. Vehicle travel is permitted only on designated roads and trails.

Lee Metcalf National Wildlife Refuge

Hunting of ducks, geese, coots and mergansers is permitted on portions of Lee Metcalf National Wildlife Refuge, Stevensville, Montana.

The following special regulations apply:

1. All hunters must enter the public hunting area through appropriate check stations.

2. Hunters will be limited to three shells per duck of the daily bag limit.

3. All hunters must set blind selection pointer to "taken" upon selecting a blind, and return blind selection pointer to "open" upon leaving the hunting area.

4. Placing blind selection pointer to "taken" determines the occupant of the blind.

5. During periods of high hunter demand, as determined by the Refuge Manager, hunters will be limited to one period only during a day:

Period No. 1: Start of shooting hours to 12:00 noon.

Period No. 2: 1:00 p.m. until close of shooting hours.

6. Hunters must be within ten feet of designated blind sites while attempting to take and taking of waterfowl game birds.

7. Blind sites will be limited to five hunters each.

8. A designated area will be open to the taking of ducks, geese, coots and mergansers by means of falconry from the opening of the migratory waterfowl season through end of general deer season. No firearms may be carried in this area.

9. The public hunting area will be closed to entry from one hour after sunset until 1½ hours before sunrise.

10. No fishing equipment of any type will be permitted on the public hunting area.

11. Boats are not permitted.

Medicine Lake National Wildlife Refuge

Migratory game bird hunting is permitted on the Medicine Lake National Wildlife Refuge, Montana, only on the area designated by signs as being open to migratory game bird hunting. This area comprises 10,163 acres and is delineated on maps available at the refuge headquarters and from the office of the Area Manager. Vehicle travel is permitted only on designated trails.

Red Rock Lakes National Wildlife Refuge

The hunting of ducks, geese, coots, and mergansers is permitted on approximately 10,000 acres of Red Rock Lakes National Wildlife Refuge, Lima, Montana. The hunting area is delineated on maps. Hunting is subject to the special regulation that hunters are prohibited from constructing permanent blinds on the refuges.

Swan River National Wildlife Refuge (Headquarters Northwest Montana Fishery Center)

Hunting of migratory game birds is permitted on approximately 630 acres. The hunting area is delineated on maps available at Northwest Montana Fishery Center, Kalispell, and National Bison Range, Moise, Montana.

§ 32.22 Special Regulations: Upland game; for individual wildlife refuge areas.

Montana

Benton Lake National Wildlife Refuge

Hunting of Gray (Hungarian) Partridge is permitted on approximately 4,100 acres of the Benton Lake National Wildlife Refuge, Black Eagle, Montana.

The following special regulations apply:

1. The Hungarian partridge hunting season opening and closing dates on the refuge are the same as the waterfowl hunting season.

2. The daily shooting hours for Hungarian partridge are the same as for waterfowl hunting.

Bowdoin National Wildlife Refuge

Hunting of upland game birds is permitted on approximately 6,200 acres of Bowdoin National Wildlife Refuge, Malta, Montana.

Charles M. Russell and UL Bend National Wildlife Refuges

Upland game birds, turkeys, and coyote hunting are permitted on approximately 750,000 acres of the Charles M. Russell and UL Bend National Wildlife Refuges, Lewistown, Montana. Coyote hunting is permitted only from October 11, 1981, to March 15, 1982, from one-half hour before sunrise to one-half hour after sunset with sporting firearms and bow and arrow.

Vehicle travel is permitted only on designated roads and trails, and all off-road vehicle traffic is prohibited.

Medicine Lake National Wildlife Refuge

Upland game bird and jackrabbit hunting is permitted on the Medicine Lake National Wildlife Refuge, Medicine Lake, Montana, only on the areas designated by signs as being open to upland game hunting. These areas comprising 10,163 acres are delineated on maps available at the refuge headquarters and from the office of the Area Manager. Vehicle travel is permitted only on designated trails.

§ 32.32 Special regulations: Hunting of big game for individual wildlife refuge areas.

Montana

Charles M. Russell and UL Bend National Wildlife Refuges

Big game hunting is permitted on approximately 750,000 acres of the Charles M. Russell and UL Bend National Wildlife Refuges, Lewistown, Montana. Vehicle travel is permitted only on designated roads and trails and all off-road vehicle traffic is prohibited, including the retrieval of downed game.

Lee Metcalf National Wildlife Refuge

The taking of white-tailed and/or mule deer by bow and arrow will be permitted on designated areas of Lee Metcalf National Wildlife Refuge by means of archery only. The following special conditions apply:

1. All hunters must check in and out at checking stations.
2. No firearms may be carried in this area.
3. The public hunting area will be closed to entry from one hour after sunset until one and one-half hours before sunrise.

Medicine Lake National Wildlife Refuge

Big game hunting is permitted on the Medicine Lake National Wildlife Refuge, Montana, only on the areas designated by signs as being open to big game hunting. These areas, comprising 10,163 acres, are delineated on maps available at the refuge headquarters and from the office of the Area Manager. Unlimited vehicle travel is permitted only on country roads. In the hunting areas, vehicle travel is permitted only for the retrieval of deer on designated retrieval roads. Horses may be used only for the retrieval of big game.

Red Rock Lakes National Wildlife Refuge

Big game hunting is permitted on approximately 20,000 acres of Red Rock Lakes National Wildlife Refuge, Lima, Montana. The hunting area is delineated on maps. Vehicle travel is permitted only on designated roads. All off-road vehicle travel is prohibited, including the retrieval of downed game.

Wyoming

National Elk Refuge

Hunting of elk on the National Elk Refuge, Jackson, Wyoming, is permitted on approximately 16,327 acres. Hunting shall be in accordance with the following special conditions:

1. A special permit is required in addition to a valid current State elk hunting license. Special permits shall be issued by drawing.
2. Persons without permits may accompany special permit holders, but only permit holders may be armed. Anyone entering hunt area must wear fluorescent orange.
3. Permits will be revoked in the event of a violation of refuge regulations and can result in denial of future privileges on the refuge.
4. Access to the refuge is only through the main gate east of refuge headquarters in Jackson.
5. Vehicles must be parked only in designated parking areas. No camping is allowed on refuge, including parking lots and hunt area.
6. All motorized travel is prohibited in the hunt area, except that vehicles will be permitted on designated roads after 4:00 p.m. to dark each day to facilitate retrieval of elk killed. Horses are permitted.
7. Citizens Band (C.B.) radios are not allowed in hunt areas.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32.

§ 33.5 Special regulations: Sport fishing for individual wildlife refuge areas.

Montana

Charles M. Russell and UL Bend National Wildlife Refuges

Sport fishing is permitted on all waters of the Charles M. Russell and UL Bend National Wildlife Refuges, Lewistown, Montana. These areas comprise approximately 250,000 acres. All sport fishing shall be subject to the following regulations:

1. Portable icehouses and other structures expressly used for ice fishing are permitted within the Charles M. Russell National Wildlife Refuge only from December 1 through March 31 of the following year. These structures must be removed from the wildlife refuge entirely by March 31 of each year. In addition, each structure must be labeled with the owner's name and permanent, address in a prominent location on an outside sidewall.

Violations of this regulation will be treated under the provisions of §§ 27.92 and 27.93 of Title 50 of the Code of Federal Regulations, dealing with unauthorized private structures and abandoned property. Penalties described in Part 28 will be applicable.

2 Vehicle travel is permitted only on designated roads and trails and all off-road vehicle traffic is prohibited.

Lee Metcalf National Wildlife Refuge

Sport fishing using only a single line and hook or hooks, with or without a pole, is permitted throughout the year on a portion of the Lee Metcalf National Wildlife Refuge. The open area is approximately four miles of the Bitterroot River, which borders the refuge on the west, and the Burnt Fork Creek and its related oxbow (Francois Slough). Fishermen must remain below the upland portion of the river banks. The fishing area is designated by signs and delineated on maps available at refuge headquarters, Stevensville, Montana.

Medicine Lake National Wildlife Refuge

Sport fishing is allowed on waters of Medicine Lake National Wildlife Refuge as follows: Medicine Lake, Deep Lake, and Sayer Bay, November 15–September 15, waters in the public hunting area August 15–March 31 and Number 12 Lake, November 15 through March 31. In Medicine Lake all motorized equipment is prohibited and no trespassing is allowed on islands. Waters other than Medicine Lake are open to motor boats with less than 16 h.p. motors. Open fires, camping and driving off improved roads or established trails are prohibited on the public fishing area. Maps of the fishing area are available at refuge headquarters.

National Bison Range

Sport fishing on the National Bison Range, Moiese, Montana, is only permitted along the portions of the Jocko River as posted. These open areas are delineated on maps available at refuge headquarters, one-half mile east of Moiese, Montana.

Ninepipe National Wildlife Refuge (Headquarters National Bison Range, Moiese, Montana)

Entire refuge is open from July 15, until beginning of waterfowl hunting season, and before July 15 on west and north shorelines from picnic area to Allentown bridge, except central portion of north shore (9/10 of a mile), as posted.

Entire refuge is closed during migratory waterfowl hunting season. Ice fishing is permitted after the closure of waterfowl hunting season until March 1. A Tribal Recreation Permit is required.

Sport fishing is permitted in accordance with the following special regulations:

1. Offshore islands are closed to fishing and trespass.
2. Use of boats if prohibited.
3. Vehicles must be parked at designated areas.
4. Motorized travel on the ice is prohibited.
5. No ice fishing shelters may be left overnight.
6. Camping is prohibited.

Pablo National Wildlife Refuge (Headquarters National Bison Range, Moiese, Montana)

Sport fishing is not permitted on Pablo Reservoir during the migratory waterfowl hunting season. Sport fishing is permitted during the rest of the year, in accordance with the special regulations shown below, on the north and east shorelines from the inlet canal to the south end of the dam as posted. Ice fishing is permitted after the closing of the waterfowl hunting season. A Tribal Recreation Permit is required.

Sport fishing is permitted in accordance with the following special regulations:

1. Offshore islands are closed to fishing and trespass.
2. Use of boats if prohibited.
3. Vehicles must be parked at designated areas.
4. Motorized travel on the ice is prohibited.
5. No ice fishing shelters may be left overnight.
6. Camping is prohibited.

Northwest Montana Waterfowl Production Areas (Headquarters Northwest Montana Fishery Center, Kalispell, Montana)

Flathead Lake Watefowl Production Area, Smith Lake Waterfowl Production Area and Batavia Waterfowl Production Area are open to sport fishing. They are closed to all entry from March 1 to July 1. All islands at the mouth of the Flathead River are closed to trespass except during the waterfowl hunting season. The following special regulations apply to fishing:

1. Vehicle travel is permitted only on designated roads and area.
2. Camping is prohibited.

Swan River National Wildlife Refuge (Headquarters Northwest Montana Fishery Center, Kalispell, Montana)

Sport fishing is permitted on those parts of the Swan River and Swan Lake which lie within the boundaries of Swan River National Wildlife Refuge. Fishing from shore within the refuge is prohibited from March 1 to July 1.

Fishing is subject to the following regulations:

1. Vehicle travel is permitted only on designated roads and parking areas.
2. Camping is prohibited.

Red Rock Lakes National Wildlife Refuge

Sport fishing is permitted on Red Rock Lakes National Wildlife Refuge, Lima, Montana. All areas open to fishing are delineated on maps. Fishing is subject to the special regulation that boats with motors are prohibited.

Wyoming

National Elk Refuge

Sport fishing is permitted from Saturday preceding Memorial Day through October 31, only on the areas designated by signs as being open to fishing. Fish and access on refuge waters are permitted during daylight hours only. Use of boats or other floating devices, overnight camping, and fires are prohibited.

The provisions of these special regulations supplement the regulations which govern fishing on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish, Wildlife and Parks.

[FR Doc. 81-28135 Filed 9-28-81; 8:45 am]
BILLING CODE 4310-55-M

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50 CFR Part 32

Kootenai National Wildlife Refuge, Idaho; Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The popularity of public waterfowl hunting on the Kootenai National Wildlife Refuge in Idaho has grown to the extent that crowded hunting conditions have caused management problems. One of the most important of these problems is the high loss of crippled waterfowl. To alleviate this high crippling loss the Service proposes to establish a retrieving zone adjacent to a closed area boundary and impose a daily limit (25) on the number of shotgun shells each hunter may shoot on the refuge hunting area.

EFFECTIVE DATES: October 3, 1981 through January 10, 1982.

FOR FURTHER INFORMATION CONTACT: Refuge Manager, Larry Napier, Kootenai National Wildlife Refuge, Star Route 1, Box 160, Bonners Ferry, Idaho 83805. (208) 267-3888.

SUPPLEMENTARY INFORMATION: The author of this document is W. D. Carter, Boise Area Office, U.S. Fish and Wildlife Service, 4620 Overland Road, Boise, Idaho 83705, 208-334-1965.

Hunting on portions of the Kootenai National Wildlife Refuge shall be in accordance with applicable State and Federal regulations, subject to additional Special Regulation and conditions as indicated. Portions of the refuge open to hunting are designated by signs and/or delineated on maps. Special conditions applying to the refuge are listed on the reverse side of maps available at refuge headquarters.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were established. In addition, the Refuge Recreation Act requires that: (1) Any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation. The recreational use authorized by these regulations will not interfere with the primary purposes for which Kootenai Wildlife Refuge was established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement of the Operation of the National Wildlife Refuge System published in November, 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Note.—The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193), and that the rulemaking would not have "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (Pub. L. 96-354) and 43 CFR Part 14.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Kootenai National Wildlife Refuge

Special conditions:

(1) Waterfowl hunting is permitted on Saturdays, Sundays, Tuesdays and Thursdays.

(2) Hunters are required to use native vegetation for hunting blind construction.

(3) Hunters are limited to the use and/or possession of no more than 25 shells per day.

(4) Hunters may enter the posted retrieving zone for purposes of retrieving down birds or traveling to or from the hunting area but all firearms must be unloaded in this area.

Dated: September 4, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28109 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-55-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: Department of Labor.

ACTION: Deferral of effective date of final rule.

SUMMARY: This document defers the effective date of 29 CFR 2530.203–3, Suspension of Benefit Rules, until action is taken on certain proposed amendments to the regulation. This regulation had been due to take effect on October 1, 1981.

DATE: The effective date of 29 CFR 2530.203–3 is deferred until action is taken on amendments to the regulation which were proposed on August 31, 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. The Department has deferred the effective date in order to permit reconsideration of this regulation in accordance with Executive Order 12291 and in light of public comments received on the final regulation, and to coordinate review by the Office of Management and Budget, as required by the Executive Order.[1]

The Department proposed certain technical amendments to this regulation on August 31, 1981 (46 FR 43695; republished September 1, 1981, 46 FR 43852). In view of that action, the Department sought public comment on whether the regulation should be permitted to take effect before a final decision is made regarding adoption of the proposed amendments. Accordingly, on the same day, the Department deferred the effective date of the suspension of benefits regulation until October 1, 1981, and proposed for public comment deferring the effective date until action is taken on the proposed amendments (46 FR 43663; republished September 1, 1981, 46 FR 43833).

Virtually all of the commentators suggested that it would be desirable to have the regulation and any amendments to it become effective simultaneously. Such a course, it was argued, would avoid the confusion and costs associated with piecemeal implementation of the suspension of benefit rules. Commentators differed, however, with regard to the specific manner in which this should be accomplished.

Some commentators argued that the regulation should be made effective as scheduled on October 1, 1981, and that the proposed amendments should also be made effective, on an interim basis, on that same date. It was noted that the Department has in the past made ERISA related regulations effective on an interim basis, before receiving public comment. These commentators argued that such a course would best serve the public interest and the interest of plan participants and beneficiaries, and that any further deferral would be unreasonable and unjustifiable. It was also noted in this regard that, because the amendments are technical and were proposed specifically in response to numerous comments already received by the Department, it is unlikely that they would be substantially revised in light of any further comments.

Other commentators, however, argued that no part of the regulation should be implemented until the Department has made a final decision on all substantive provisions of the regulation. These commentators suggested that the Department should review carefully any additional comments, and, after final decisions have been made and announced, should provide an additional period of deferral in order to permit plans to be brought into compliance with the "new" rules.

After carefully considering these comments, the Department has determined to defer the effective date of the suspension of benefits regulation util action is taken on the recently proposed amendments. The Department gave serious consideration to the suggestion that the final regulation should be made effective immediately, with the proposed amendments made effective on an interim basis. Such an approach, under the Administrative Procedure Act, is an extraordinary course which must be specifically justified in each individual case. The comment period on the proposed amendments has not yet expired, and the Department expects to receive comments from affected persons concerning the likely effectiveness of the amendments in achieving their intended goals. Accordingly, the Department believes that it would be in the public interest to review these comments before the regulation and amendments take effect. Moreover, because of the limited, technical nature of the proposed amendments, the Department believes that a decision will be reached on the amendments within 30 to 60 days from the close of the comment period. In this regard, and in response to comments which suggested the need for an additional deferral once a final decision on the proposed amendments is made, it should also be noted that the Department anticipates that the regulation as amended after the Department's review of comments timely received on the pending proposals will become effective no later than January 1, 1982. As a result, the additional period of deferral, while serving a very useful purpose, will be for a minimal amount of time. In light of the preceding discussion, the Department has concluded that it would be preferable in this instance to wait an additional brief period before implementing these rules.

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 final rulemaking action is taken on the amendments to the regulation which were proposed on August 31, 1981.

Signed at Washington, D.C., this 24th day of September 1981.

Donald L. Dotson,

Assistant Secretary, Labor-Management Relations.

[FR Doc. 81-28400 Filed 9-28-81; 12:12 pm]

BILLING CODE 4510-29-M

[1] On May 26, 1981, June 30, 1981, and July 31, 1981, the Department announced (46 FR 28151, 33517, 39138) deferrals of the effective date of the suspension of benefits regulation until July 1, 1981, August 1, 1981, and September 1, 1981, respectively.

Proposed Rules

Federal Register
Vol. 46, No. 188
Tuesday, September 29, 1981

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

Onions Grown in Certain Designated Counties in Idaho and Malheur County, Oreg.; Recommended Decision on Proposed Amendment of Marketing Agreement and Order and Opportunity To File Written Exceptions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This recommended decision proposes an amendment to the marketing agreement and order regulating onions grown in Idaho and Malheur County, Oregon, and provides interested persons an opportunity to file written exceptions to the proposal. The proposed amendment would add a public member to the marketing order administrative committee and authorize the prohibition of overloading rail cars. The primary intent of the proposal is to improve the program's administration and usefulness.

DATE: Written exceptions to this recommended decision may be filed by October 29, 1981.

ADDRESSES: Written exceptions should be filed in duplicate with the Hearing Clerk, Room 1077–S, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, Fruit and vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447–2615.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued April 13, 1981, and published April 17, 1981 (46 FR 22382).

This formal rulemaking action is governed by the provisions of the Administrative Procedure Act, and therefore is not subject to the requirements of Executive Order 12291.

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 regulated handlers.

It has been determined that a comment period of less than 60 days is warranted. If the proposal is adopted, handlers need to know of any change as soon as possible so they can plan their marketing operations accordingly. The proposal was considered at a public hearing on May 13, 1981, and interested persons were allowed to file written comments through June 30. Under these circumstances, it is hereby determined that a comment period of 30 days is sufficient and will effectuate the declared policy of the act.

Preliminary statement. Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed further amendment of the marketing agreement and Order No. 958 regulating the handling of onions grown in Idaho and Malheur County, Oregon.

The above notice of filing of the decision and of opportunity to file exceptions to it is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

This proposed amendment was formulated on the record of a public hearing held in Ontario, Oregon, on May 13, 1981. Notice of the hearing was published in the April 17, 1981, issue of the **Federal Register.** The notice set forth a proposed amendment submitted by the Idaho-Eastern Oregon Onion Committee on behalf of onion producers and handlers in the production area.

Material issues. The material issues of record are as follows:

(1) Adding a public member and alternate on the committee and establishing qualifications for such membership;

(2) Providing authority to prohibit overloading railcars;

(3) Making such changes in the order as may be necessary to bring it into conformity with any amendments that may result from the hearing.

Findings and conclusions. The following findings and conclusions on the material issues are based on the record of hearing:

(1) The Idaho-Eastern Oregon Onion Marketing Agreement and Order (hereinafter in the text of findings and conclusions referred to as the "order") should be amended to provide for public representation on the committee. To effectuate such a change, § 958.20 of the current order providing for the establishment and membership of the Idaho-Eastern Oregon Onion Committee should be revised to enlarge the committee from ten members to eleven members, with the additional member to be a public member. Further, § 958.22 providing for eligibility of committee members should be revised to indicate criteria for the public member, a new paragraph (g) should be added to § 958.28 "Nominations" to indicate the procedures which should be used in the nomination of the public member, and § 958.25 "Duties" should be revised to incorporate nominating the pubic member as a committee duty.

Record evidence indicates that public representation on the Idaho-Eastern Oregon Onion Committee could improve the exchange of information and viewpoints between industry members and the public. While the influence of consumers is implicitly present in the deliberations of producer and handler members, and all committee meetings are open to the public, the appointment of a public member would provide more direct communication between industry members and the public. The public member should have the same rights and privileges as other committee members, such as an equal vote, reimbursement for expenses, and membership on subcommittees. As is provided for producer and handler members, the public member should have an alternate.

Individuals selected from the public to serve on the committee should meet eligibility requirements specified by the committee in administrative rules issued with the approval of the Secretary. The record indicates that public representatives should not be permitted to have a financial interest in the commercial production, financing, buying, packing or marketing of onions except as a consumer, or be a director,

officer or employee of any firm so engaged. Also, the public representatives should be able to devote sufficient time and indicate a willingness to attend committee meetings regularly and to become familiar with the background and economics of the industry. The evidence further indicates that they should be residents of the production area so that participation in committee meetings and other activities would be more convenient and less expensive. This would also provide public participants a better opportunity to become and remain familiar with the production and marketing of onions in the production area.

The record indicates that the public member and alternate should be nominated by the industry members of the committee at the first meeting following the selection of members for a new term of office, and should serve on the committee until a successor is selected and has qualified.

(2) A new paragraph (a)(6) should be added to § 958.52 "Issuance of regulations" to authorize regulating the handling of onions by establishing, in terms of weight or total number or layers of containers of onions, the maximum load in railcars.

Record evidence indicates that most onions grown in the production area are shipped in 50-lb. sacks to fresh market outlets in principal metropolitan areas throughout the United States and Canada, by either rail or truck. Of these two modes of transportation, truck shipments account for approximately two-thirds of the total. Most shipments to eastern markets move by rail, and to other areas, movement by truck is predominant.

Rail and truck transportation differ in several respects. Rail transit times are generally about twice those of trucks. For example, it takes seven days for a railcar to travel from the production area to New York City compared to 72 hours for a truck. A typical truck is loaded to between 800 and 900 sacks of onions, whereas the maximum capacity of a railcar is between 2,200 and 2,300 sacks. Trucks are usually loaded six to seven tiers high, and railcars in the most recent season—10 to 11 tiers high. Trucks are generally well ventilated, while railcars as currently used are not. State regulations establish weight limitations on truck loads; no such limitations exist for the railcars. Finally, per unit of weight, rail is generally a less expensive means of transport, especially when used to haul onions long distances.

The desire to save on transportation costs has led to the loading of an increased number of 50-lb. sacks per railcar. This practice was prompted by a pricing change by the Union Pacific Railroad Company, the only railroad currently serving the production area. Prior to deregulation of the railroads in May 1979, Union Pacific established freight rates on a per hundredweight basis. During that time, a minimum load acceptable to the railroad was 1,600 sacks, or 80,000 pounds, of onions. It was permissible to load more sacks per car, but there was a freight charge for each bag, and the railroad would take no responsibility for any in-transit damage due to the heavier load. With an increased risk of damage and no cost savings, most shippers loaded no more than 1,600 sacks per railcar during the regulated period.

Subsequent to deregulation, however, Union Pacific set rates on a per car basis. Under this method, a flat rate is charged to transport a car of onions, with no maximum limit on the weight loaded in the car. This change has served as an inducement to shippers to load more sacks per car in order to reduce per sack transportation costs. The record indicates that recently Union Pacific charged $4,550 to transport a railcar of onions from the Ontario-Payette area to New York City. At this rate, the per sack cost would be $2.84 for a car loaded with 1,600 sacks. The cost would be reduced to $2.07 with 2,200 sacks, the approximate maximum capacity of a railcar. At the same time, it would have cost approximately $3.25 per sack to haul a load that distance by truck. Thus there is a strong incentive to load railcars heavily, even though the risk of in-transit damage increases. Some shippers are willing to take on the risk of a damage claim filed against them since the amount of the claim may not offset savings in transit costs per unit.

In the two seasons following the change in Union Pacific's pricing policy, shippers have responded to this incentive. In 1979–80, 32 percent of the railcars shipped from the production area contained more than 1,800 sacks of onions, and 21 percent contained over 1,900 sacks. In 1980–81, 85 percent of railcars shipped contained more than 1,800 sacks and 83 percent contained more than 1,900 sacks. In the latter season, approximately 75 percent of the railcars were loaded with between 1,901 and 2,000 sacks, and seven percent contained even heavier loads.

The record further indicates that heavy loading, expected to continue in the future given the incentive of lower per sack costs, leads to onions being damaged in-transit and reaching destination in poor condition. The majority of railcars are currently loaded 10 to 11 tiers high. The excessive weight placed on onions in the lower tiers causes bruising damage. Mechanical refrigerated cars are used to transport onions. This type of railcar, developed to haul frozen foods, is a sealed container which provides no ventilation. The greater mass of onions cuts off the air flow in the car, leading to a build up in humidity which results in mold, spoilage and decay. Several witnesses testified that the damage incurred due to overloading has resulted in a number of damage claims filed by receivers, with the majority against railcars containing heavier loads. The rate of claims is greatest against cars containing more than 1,900 sacks.

Damage due to overloading is not a problem with truck shipments, or "piggyback" vans on rail flat cars. Since trucks hold fewer onions and are loaded fewer tiers high, crushing is less likely. Greater air circulation reduces problems resulting from high humidity, and shorter transit times provide less time for problems to develop.

Through the marketing order program, the Idaho-Eastern Oregon onion industry has established a reputation for delivering high-quality onions. To this end, mandatory minimum grade and size regulations have been issued for many years to ensure that only onions of acceptable quality are shipped, and production and marketing research has been carried on to continually improve the onion quality. Additionally, the committee spends approximately $250,000 annually to promote the high-quality onions available from the area. The practice of overloading railcars interferes with the achieving of the objectives of the marketing order program, which are to promote orderly marketing and improve returns to onion producers. Continuation of overloading and the resulting poor arrivals would damage the reputation of the entire industry and damage current and past efforts and investments under the program.

The record indicates that the practice of overloading railcars is a disruptive force in a highly competitive marketplace. When some shippers load cars heavier to achieve lower freight costs, it is necessary for other shippers to do so if they wish to offer their customers a competitive price. Likewise, receivers must accept cars which are heavily loaded to remain on an equal cost basis with their competitors. Shippers and receivers are therefore forced to take on the risk of poor arrivals, and the entire industry suffers

as a result of lower quality onions reaching the consumer. Both shippers and receivers have expressed support of setting a maximum limit on the weight which may be loaded on a railcar to standardize loads and restore stability in the marketplace. This would help ensure that onions arrive in good condition, to the benefit of the industry and the consuming public.

The record further indicates that onions inspected and labeled as U.S. No. 1 grade prior to loading may not arrive in U.S. No. 1 condition after being transported a long distance in an overloaded railcar. Nonetheless, such onions are often sold alongside U.S. No. 1 onions that have been shipped properly and have incurred no damage in-transit, thereby disrupting the price structure and creating confusion in the marketplace.

Several witnesses indicated a reasonable maximum limit to be 1,600 sacks, or 80,000 pounds, per railcar. This was also the recommendation of the Idaho-Oregon Fruit and Vegetable Association, which is comprised of local shippers. It appears, however, that a 1,600 sack limit was recommended largely because it was used by Union Pacific as a basis for establishing rates prior to deregulation, and it is therefore one the trade is accustomed to. Record evidence indicates that it is difficult to establish a precise limit since the problem of overloading is a recent one. Following deregulation, shippers gradually increased their loads—adding sacks when freight rates increased, thereby maintaining a consistent per sack cost. Such incremental increases have made it difficult to determine the point at which damage is most likely to occur. The authorization to specify maximum weights should therefore be flexible so that the committee can recommend changes in the limit as experience indicates. A portion of the committee's research budget may be used to study the problem and enable it to make more informed recommendations.

The record indicates that damage incurred en route also is related to the condition of the onions prior to loading. For example, growing conditions in a given season can affect a crop's susceptibility to mold, spoilage, bruising and decay. The loading limitation is therefore anticipated to very from time to time and should be considered at least annually at committee meetings open to the public. In recommending such a regulation, the committee should be required to take into account the types of containers and sizes of railcars used, potential resulting damage due to various levels of loading, and other relevant factors.

(3) Certain conforming changes should also be made so that the order, as amended, would be consistent. One such change, to add nominating the public member as a committee duty to § 958.25 "Duties," has already been mentioned in the discussion about adding the public member. All such changes should be incorporated in the recommended amendment of the order.

Rulings on briefs of interested persons. At the conclusion of the hearing, the Administrative Law Judge fixed June 30, 1981, as the final date for interested persons to file proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing. Four briefs were filed.

Roy Hornlund, a local Idaho shipper, filed a brief supporting the proposal to prohibit overloading railcars.

Briefs in opposition to the proposal were filed by William Huizinga, a local Idaho shipper and Lawrence F. Piazza, Jr., a New England receiver. Both stated that their firms had not experienced problems due to overloading. Although individual firms may not have experienced onion damage attributable to loading practices, record evidence indicates that in general there is a correlation between heavily loaded railcars and in-transit damage.

M. J. Glen, Union Pacific Railroad Co., also opposed adding the authority to prohibit overloading railcars on the gounds that such authority would subject the railroad to regulation. Although regulations which may be issued under this authority may indirectly affect the railroad, they would only apply to, and be legally binding on, onion handlers.

Each point included in the briefs was carefully considered, along with evidence in the record, in making the findings and reaching the conclusions contained herein. To the extent that any suggested findings or conclusions contained in any of the briefs or arguments are inconsistent with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied on the basis of the facts found and stated in connection with the recommended decision.

General findings. Upon the basis of the record, it is found that: (1) The following findings are supplementary, and in addition to the findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except for those findings and determinations which may be in conflict with the findings and determinations set forth herein, all of those findings and determinations are hereby ratified and affirmed.

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions of it, will tend to effectuate the declared policy of the act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of onions grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial activity specified in the marketing agreement and order upon which hearings have been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(5) The marketing agreement and order prescribe, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of onions grown in the production area; and

(6) All handling of onions grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

Recommended Amendment of the Marketing Agreement and Order

The following amendment of the marketing agreement and order is recommended as the detailed means by which the foregoing conclusions may be carried out:

1. Revise paragraph (a) of § 958.20 to read:

§ 958.20 Establishment and membership.

(a) The Idaho-Eastern Oregon Onion Committee, consisting of six producer

members, four handler members, and one public member is hereby established. Each shall have an alternate who shall have the same qualifications as the member.

* * * * *

2. Revise the introductory text and add paragraph (e) to § 958.22 to read:

§ 958.22 Selection.

The Secretary shall select committee members and alternates from the nominee lists submitted pursuant to this part or from among other eligible persons.

* * * * *

(e) The public member shall be a resident of the production area and have no direct financial interest in the commercial production, financing, buying, packing or marketing of onions except as a consumer nor be a director, officer or employee of any firm so engaged.

§ 958.25 Duties

3. Add a new paragraph (k) to § 958.25 to read:

* * * * *

(k) To recommend nominees for the public member and alternate.

4. Add a new paragraph (g) to § 958.28 to read:

§ 958.28 Nominations.

* * * * *

(g) The producer and handler members of the committee shall nominate the public member and alternate. The committee shall prescribe such additional qualifications, administrative rules and procedures for selection and voting for each candidate as it deems necessary and as the Secretary approves.

5. Add a new paragraph (a)(6) to § 958.52 to read:

§ 958.52 Issuance of regulations.

* * * * *

(a) * * *

(6) Regulate the handling of onions by establishing, in terms of total weight or total number or layers of containers of onions, the maximum load in railcars, taking into account types of containers and sizes of railcars used, potential resulting damage, and other relevant factors.

* * * * *

Signed at Washington, D.C., on September 23, 1981.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 81-28088 Filed 9-28-81; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1011, 1046, 1098

[Docket Nos. AO-251-A23, AO-123-A48, and AO-184-A43]

Milk in the Tennessee Valley, Louisville-Lexington-Evansville and Nashville, Tennessee, Marketing Areas; Rescheduling of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Rescheduling of public hearing on proposed rules.

SUMMARY: This notice reschedules the date of the hearing that will be held to receive testimony on proposed amendments to the Tennessee Valley, Louisville-Lexington-Evansville and Nashville, Tennessee, milk orders. Dairymen, Inc. (DI), a cooperative representing many dairy farmers supplying these markets, asked for the delay. The hearing is being held to consider proposed amendments offered by a handler and two cooperative associations.

DATE: The rescheduled hearing will convene October 21, 1981.

ADDRESS: The rescheduled hearing will be held at the Louisville Inn, 120 West Broadway, Louisville, Kentucky 40202, beginning at 9:30 a.m., local time.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-5443.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued September 4, 1981; published September 11, 1981 (46 FR 45354).

Correction published September 22, 1981 (46 FR 46813).

A notice was issued on September 4, 1981 (46 FR 45354), announcing a public hearing to be held on October 6, 1981, on proposed amendments to the tenative marketing agreements and to the orders, regulating the handling of milk in the Tennessee Valley, Louisville-Lexington-Evansville and Nashville, Tennessee, marketing areas.

Notice is hereby given, pursuant to the rules of practice and procedure applicable to these proceedings (7 CFR Part 900), that the said hearing is rescheduled to be held at the Louisville Inn, 120 West Broadway, Louisville, Kentucky 40202, beginning at 9:30 a.m. on October 21, 1981.

Signed at Washington, D.C., on September 24, 1981.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 81-28216 Filed 9-28-81; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1097, 1102, and 1108

[Docket Nos. AO-219-A36, AO-237-A30, and AO-243-A34]

Milk in the Memphis, Tennessee; Fort Smith, Arkansas; and Central Arkansas Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends certain changes in the provisions of the Memphis, Fort Smith and Central Arkansas orders. For all three orders, the decision recommends that a charge on overdue accounts be provided, that the partial payment rate for producer milk during August–February be increased $1 per hundredweight, and that the maximum charges for order administration and marketing services be established at 6 and 7 cents per hundredweight, respectively. Under the Memphis and Central Arkansas orders, the decision recommends changes pertaining to the payment for bulk milk purchased from a cooperative's pool plant. Under the Fort Smith and Central Arkansas orders, the decisison recommends that handlers who are more than 3 days late in payment of an order obligation channel their payments to producers through the market administrator for 3 months. Under the Central Arkansas order, changes would be made in the supply plant pooling qualifications, the diversion limitations on producer milk, and the price adjustments applicable at certain plant locations. This decision is based on industry proposals considered at a public hearing held April 15–17, 1980. The recommended changes are necessary to reflect current marketing conditions and to assure orderly marketing conditions in the respective areas.

DATE: Comments are due on or before October 19, 1981.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S.

Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4824.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Prior documents in this proceeding: *Notice of hearing*—issued March 26, 1980; published March 31, 1980 (45 FR 20888). *Supplemental notice of hearing*—issued April 7, 1980; published April 10, 1980 (45 FR 24492). *Partial decision*—issued July 14, 1980; published July 18, 1980 (45 FR 48159). *Final order*—issued July 28, 1980; published July 31, 1980 (45 FR 50704).

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the Memphis, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900). Interested parties may file written exceptions to this decision with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, by October 19, 1981. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing conducted at Memphis, Tennessee, on April 15-17, 1980. Notices of such hearing were issued March 26, 1980 (45 FR 20888) and April 7, 1980 (45 FR 24492).

The material issues on the record relate to:

1. Partial payments to producers and cooperative associations under the Memphis, Fort Smith, and Central Arkansas orders.

2. Charges on overdue accounts under the Memphis, Fort Smith, and Central Arkansas orders.

3. Maximum administrative assessment rate under the Memphis, Fort Smith, and Central Arkansas orders.

4. Maximum marketing service deduction under the Fort Smith and Central Arkansas orders.

5. Payment of producers and cooperative associations through the market administrator under the Fort Smith and Central Arkansas orders.

6. Payments for milk from cooperative association plants under the Memphis and Central Arkansas orders.

7. Pool plant "lock-in" provision under the Central Arkansas order for distributing plants.

8. Pool supply plant qualifications under the Central Arkansas order.

9. Quantity limits and point of pricing on diversions of producer milk under the Central Arkansas order.

10. Location adjustment provisions of the Central Arkansas order.

11. Location adjustment provisions of the Memphis order.

12. Miscellaneous changes.

13. Whether an emergency exists to warrant the omission of a recommended decision on issues Nos. 7 and 11.

A prior decision dealt with issues Nos. 7, 11, and 13. The remaining issues of the hearing are considered in this decision.

Findings and Conclusions

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

1. Partial Payments to Producers and Cooperative Associations Under the Memphis, Fort Smith and Central Arkansas Orders

A proposal requiring handlers under the Memphis, Fort Smith and Central Arkansas orders to make a second partial payment each month for milk received from producers should not be adopted. A proposal to increase the current partial payment rate during the months of August through February by $1.00 per hundredweight should be adopted. The Memphis order should be further modified to permit deductions authorized by the producer to be made from the partial payment to such producer. The Fort Smith order should be further modified to permit deductions to be made from both the partial and final payments to producers.

The three orders currently require that a handler make 1 partial payment and a final payment for milk received from producers during each month. The rate of the partial payment under the three orders is the Class III price for the preceding month. The amount of the partial payment due each producer is determined by multiplying the rate of such payment by the hundredweight of milk received from such producer during the first 15 days of the month. Of the 3 orders, only the Central Arkansas order specifies that the partial payment may be reduced to reflect deductions authorized by the producer. The final payment to producers under the 3 orders is determined by multiplying the uniform price(s) for milk, or base milk and excess milk, adjusted by the butterfat differential and location adjustments to producers by the respective hundredweights of milk received from each producer during the month. The payments are then reduced by the amount of the partial payment made for milk received during the first 15 days of the month. The Memphis and Central Arkansas orders specify that the final payment due each producer may be reduced by deductions authorized by such producer.

Associated Milk Producers, Inc. (AMPI), a cooperative association representing the majority of the producers supplying handlers regulated under the 3 orders, proposed that each of the orders be revised to require a handler to make 2 partial payments and a final payment for milk received each month from producers. The rates proposed for the two partial payments during the months of March through July would be the previous month's Class III price. During the months of August through February, the partial payment rates would be the previous month's Class III price plus one dollar. The rates during the months of August-February would be further adjusted by the zone or location adjustment applicable at the receiving plant. Under the cooperative's proposal, the two partial payments due the producer could be further reduced by the amount of deductions authorized by the producer to the extent that deductions to assignees have been paid by the handler prior to the date payment is otherwise due the producers.

The cooperative proposed that final payment to producers be at the uniform price(s) for the applicable month adjusted for the butterfat content of the milk and the location of the receiving plant. Deductions from the final payment to producers would be made for the two partial payments, any authorized deductions, and marketing services performed on behalf of such producers.

For milk delivered during the first 15 days of the month, the cooperative proposed that a handler make a partial payment to the market administrator for such milk by the 23rd of the month. If

the handler received milk directly from producers and a cooperative is not marketing their milk, the handler could make payment to the individual producers on or before the 23rd of the month in lieu of making such payments to the market administrator.

AMPI proposed that on the 24th of the month, the market administrator transmit handler payments for milk of producers to cooperative associations on behalf of their member producers and to a handler who elects to make payment to individual producers. In making such payments the market administrator would remit to the cooperative and such handler partial payments received from handlers for milk delivered during the first 15 days of the month. Handlers receiving payment from the market administrator to pay individual producers would be required to make such partial payments on or before the 25th of the Month. On the 25th of the month, the market administrator would then make partial payment to producers who are not receiving payments from either a cooperative association or a handler.

For milk received during the second half of the month, the cooperative proposed that a handler make partial payment for such milk on or before the 8th of the month to the market administrator or to the individual producers. On the 9th of the month, the market administrator would transmit to a cooperative association the partial payment due its members. A handler who elects to pay individual producers would also have the option of transmitting to the market administrator by the 8th day the second partial payment due the individual producers. The market administrator would then return such funds to the handler by the 9th day. The market administrator and the handler receiving partial payment funds from the market administrator to pay producers would be required to make payment to the individual producers on the 10th of the month.

The cooperative proposed that a final payment for producer milk received during the month be made to the market administrator by the 20th of the following month. A handler who elects to pay individual producers directly instead of making such payment to the market administrator could do so by making final payment to such producers by the 20th of the month. On the 21st of the month, the market administrator would pay a cooperative the amount due the members of the cooperative and pay to the handler who elects to pay individual producers the amount due the individual producers. The market administrator and the handler receiving payment funds from the market administrator would then make the final payment to individual producers on the 22nd of the month.

Proponent cooperative proposed the revised payment procedure as a means of requiring handlers to pay producers for milk on a more current basis. Its spokesman indicated that under the present payment plan producers are now paid from 15 to 30 days late for milk produced during the first 15 days of the month. At the time of final payment, producers are paid from 15 to 45 days late for milk produced during the preceding month. The cooperative held that producers should not be required to wait such lengthy periods of time for the money due them from handlers. The spokesman stated that under the current payment plan producers have to forgo the use of funds invested in the dairy operation or pay interest upon the money borrowed for such capital investment. For this reason, proponent held that an accelerated rate of payment by the handler for milk received from producers was warranted.

AMPI also proposed that the partial payment rates in each of the 3 orders for the months of August through February be the previous month's Class III price plus 1 dollar. Such price would then be further adjusted by the location adjustment applicable at the receiving plant. The spokesman for the cooperative indicated that the amount proposed to be paid by the handlers to the producers for the months of August through February represents approximately 95 percent of the uniform price paid to producers during such months in 1978 and 1979. No increase was proposed in the current partial payment rate for the months of March through July because of the possibility that the uniform price might not exceed the Class III price for the previous month by 1 dollar. The spokesman noted that in prior years the difference between the uniform price for the current month and the Class III price for the preceding month during the months of March–July was less than during other months of the year because of the general seasonal trend in the Minnesota-Wisconsin price series on which the Class III price is based.

A spokesman for the Milk Industry Foundation (MIF) and the International Association of Ice Cream Manufacturers (IAICM) opposed the proposal to modify the 3 orders to require 2 partial payments and a final payment each month. The principal basis for the handlers' opposition to the proposed payment plan was that it would create a cash flow problem for them. The handlers held that the proposed payment plan would require them to make payment to producers prior to the time in which they could receive, package, distribute, invoice and collect for the milk products sold. Their spokesman noted that if the proposals are adopted processors will either have to use their own cash reserves or borrow the funds needed to meet the accelerated payment procedure. The increased cost to the handler would then be passed on to the consumers. Handlers also claimed that the extra partial payment would increase their office costs due to the increased reporting requirements and require additional audit work by the market administrator.

The handlers' spokesman opposed the proposed $1 per hundredweight increase in the partial payment rate for the months of August–February. He opposed the increase on the basis that it would require plants with a high Class II/Class III operation to pay in excess of their obligations at the class prices under the order and would accelerate handler payments to producers.

The representative of a pool plant operator in the Memphis market also opposed the addition of a second partial payment and an increase in the partial payment rates. He noted that, while both producers and handlers are faced with cash flow problems, handlers are burdened at the time with a disproportionate share of such problems. He indicated that an economic slow-down and rising interest rates have significantly delayed payments to milk handlers while producers have continued to receive timely payments because of payment dates prescribed by the milk order and enforced by the Federal government.

The spokesman for a handler who operates a pool plant regulated under the Central Arkansas order opposed the adoption of a second partial payment to producers for milk received during the month. He presented an exhibit illustrating the extent to which the proposed payment procedure would adversely affect the cash flow of the handler. The representative testifed that if handlers are required to make a second partial payment as proposed, the Central Arkansas handler would have to borrow money to make such payment. He testified further that there is virtually no money available to handlers in the State of Arkansas in the normal line of credit for use in making a second partial payment.

The representative of a handler who operates a fluid milk plant fully

regulated under the Memphis order and a fluid milk plant partially regulated under the Central Arkansas order also opposed a second partial payment to producers as well as any increase in the rate of the partial payments. He noted that "even the one advance payment is unusual in the world of business". The representative supported the position taken by the spokesman for the 2 national handler associations and the representative of the handler fully regulated under the Central Arkansas order.

The Council of Wage and Price Stability filed a brief expressing its concern that the proposed payment procedure would result in increased costs to handlers that would be passed on to consumers. The Council recommended that the proposal for an additional partial payment not be adopted because the "increased costs to handlers implies an inflationary price increase". Also, it expressed concern that adoption of the proposal could aggravate the current milk surplus.

The hearing evidence does not support the adoption of the proposal for a second partial payment. There is no indication that marketing conditions in the affected areas are such that it is necessary that the orders require more frequent payments to producers each month.

While the Act authorizes the setting of payment dates under an order, it does not specify how frequently handlers must pay producers. The payment dates are customarily established under an order on the basis of prevailing marketing conditions, including payment practices already existing in an area or new payment practices that handlers and producers may find mutually agreeable. On this basis, each of the 3 orders now provides for one partial payment and one final payment by handlers to producers each month.

Under the proposal being considered, handlers would be required each month to make a second partial payment to producers. While the proposal by AMPI, the principal cooperative association in each of the 3 markets, was not opposed by any producers, none of the handlers under the 3 orders supported the proposal. All handler representatives who testified at the hearing opposed a second partial payment plan for producers. Because there are conflicting opinions between producers and handlers as to whether a different payment arrangement between these parties is desirable under the orders, more burden is placed on proponents to show that a second partial payment for milk is essential to the maintenance of orderly marketing in the 3 areas and that the orders must be changed to require an additional payment to producers by regulated handlers.

In general, the argument advanced by proponent cooperative for more frequent payments was the need to improve the cash flow of producers in the three markets. Proponent contended that producers are required to make payment for production facilities and supplies prior to using such items and should be paid more frequently so that they will be more able to meet their financial commitments on a timely basis. It is evident from the record, however, that the cash flow of members of the cooperative most likely would not be affected by changing the orders to require handlers to make more frequent payments. The spokesman for the cooperative indicated that the cooperative had no plans to change the current dates on which members of the cooperative are paid. Furthermore, it was his opinion that any change by the cooperative from its current payment dates would not be feasible since the cooperative normally uses the same payment schedule for all of its members throughout the southwestern part of the country.

The cooperative's spokesman stated that the cooperative has made it a practice to pay its members on the last day of the month and on the 13th of the following month for milk that the cooperative markets. It is noted that payment on the 13th of the month represents payment in advance of the time that payment is required to be made to a cooperative under any of the 3 orders. As a consequence, the cooperative at times makes payment to producers in advance of the date on which it collects payment from handlers for such milk. This is a business practice that has been in existence for some length of time and does not by itself provide sufficient reason to require that handlers make a second partial payment to producers.

The proposal to increase the partial payment rate by $1.00 per hundredweight during the months of August through February should be adopted. Such increase in the partial payment rate will result in producers receiving a partial payment and a final payment that more closely approximates the value of their milk at the blend price for such month. Under the current payment method, a producer under the Central Arkansas order during 1979 received a partial payment each month on his first 15 days' deliveries that averaged 87 percent of the value of the milk at the uniform price. At the time of the final payment, the producer then received a total dollar amount equal to 113 percent of the value at the uniform price of the milk deliveries during the 2nd half of the month. If the partial payment rate adopted herein had been in effect for the months of January, February, and August–December of 1979, the partial payment received by a producer would have averaged 95 percent of the value of the milk at the uniform price for milk delivered during the first half of the month. The final payment for milk delivered during the month would have averaged 105 percent of the value of the milk at the uniform price that was delivered in the latter half of the month.

The increase in the partial payment rate adopted herein would more closely reflect the relatively high Class I utilization of milk by plants regulated under the 3 orders. The present partial payment at the previous month's Class III price reflects only the value of milk used in manufactured products such as butter, nonfat dry milk and cheese, whereas in these markets the greatest proportion of milk deliveries is ultimately disposed of as fluid milk products. For example, approximately 87 percent of the producer milk under the Central Arkansas and Fort Smith orders combined was used in Class I during 1978 and 1979.[1] Class I utilization of producer milk during the months of August through February ranged from a low of 80 percent to a high of 91 percent during 1978 and from a low of 85 percent to a high of 93 percent during 1979. Class I utilization of producer milk under the Memphis order averaged about 83 percent in 1978 and 85 percent in 1979. During August through February of 1978, producer milk in Class I ranged from a low of 81 percent to a high of 85 percent. Such utilization ranged from a low of 81 percent to a high of 88 percent during the same period of 1979. Payment at the previous month's Class III price plus $1.00 per hundredweight for milk delivered during the first 15 days of the month would result in returning to producers (including cooperative associations) a price that is more commensurate with the value of such milk in its ultimate use.

An objection raised by handlers to an increase in the partial payment rate was that a handler operating a plant with a high Class II or Class III utilization could be assessed a partial payment in excess of the utilization value of the milk at the class prices during the first 15 days of

[1] Data for the Central Arkansas and Fort Smith orders were combined to prevent the release of confidential information regarding the Fort Smith market.

the month. The possibility of such overpayment is quite unlikely since proprietary handlers usually operate plants with Class I utilizations in excess of the marketwide average.

The Memphis and Fort Smith orders should provide that handlers need not make a partial payment to any producer who no longer is delivering milk to the market on the 25th of the month. Such provision is currently applicable in the Central Arkansas order. In the absence of such provision, the possibility exists that a handler might pay producers for more butterfat than was delivered. This could result if a producer ceased delivering milk to a handler after the 15th of the month and the butterfat content of the milk delivered was less than 3.5 percent. Under the provisions adopted herein, such producer would receive no partial payment if he quit delivering milk prior to the 25th of the month. If he quits delivering on or after the 25th of the month, the handler would have received in most instances a minimum of 10 days' production in addition to the 15 days' production initially received from such producer. In such circumstance, if the handler overpaid for the butterfat in the milk received during the first 15 days of production, he could recover such overpayment in making payment for that milk received after the 15th of the month.

2. Charges on Overdue Accounts Under the Memphis, Fort Smith and Central Arkansas Orders.

Each of the three orders should provide for the application of a charge on handler obligations that are overdue. The charge would apply to handler obligations for producer milk, for administrative assessment and for marketing services. In addition, a charge would also apply under the Central Arkansas order to obligations due to the producer-settlement and administrative expense funds by the operator of a partially regulated distributing plant.

The charge on overdue accounts should be at the rate of one percent per month (12 percent annually). The charge should apply beginning the day following the date on which payment of an obligation is due and on the same day of each succeeding month until the obligation is paid. Any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. Also, each of the orders should provide that all late-payment charges shall accrue to the administrative expense fund. Currently, none of the three orders provide for charges on overdue accounts.

The institution of a late-payment charge under the three orders was proposed by AMPI. It proposed that any unpaid obligation of a handler that is due producers, cooperative associations and the market administrator be increased one percent per month beginning on the first day after the due date, and on each date of subsequent months following the day on which such obligation is due.

The cooperative proposed that late-payment charges accrue to the fund to which payment is due except that charges resulting from the late payment of producers should accrue to those producers who are paid late. Proponent held that payment of late payment charges to the producers who are paid late is justifiable on the basis that the producers who have to wait for payment should be reimbursed for having to forego the use of such money. In the event the individual producers involved cannot be identified, the cooperative proposed that the late-payment charges for producers' receipts should accrue to the producer-settlement fund for distribution among all producers on the market.

The spokesman for AMPI contended that the institution of a charge on overdue obligations of handlers is necessary to encourage prompt payments of order obligations by regulated handlers. He pointed out that unless a charge is provided under the order, a handler who fails to pay his order obligation by the due date has a competitive advantage over those handlers who are making payments by the due date.

A representative of MIF, on behalf of the majority of handlers in the 3 markets, proposed the adoption of a two-tiered charge for accounts that are overdue. He proposed that if payment is not received by the date specified in the order but is received on or before the third day following the due date, a "late payment charge" of 0.05 percent of the unpaid balance for each day payment is not received should be assessed. If payment is not received on or before the third day following the due date, he proposed that a "delinquent payment charge" of 1.5 percent of the unpaid balance be assessed. Another 1.5 percent "delinquent payment charge" on the unpaid balance would be assessed on each 30-day anniversary of the payment due date.

The spokesman for MIF also proposed that any late-payment charges accrue to the administrative expense fund. He contended that the charges should be channeled to the administrative expense fund in order to reimburse it for the costs incurred by the market administrator in collecting the late-payments.

Proponent of a minimal daily interest rate for the first three days a payment is overdue contended that it is possible for a late payment to be made unintentionally. In his opinion, payment a few days late on an occasional basis is much different than payment several days late on a regular basis. He proposed, therefore, that a handler who makes payment during the 3 days immediately following the due date on 3 occasions during the preceding 12 months be required to make all prescribed payments to the market administrator for 3 consecutive months. In the case of a handler who fails to make payment within the 3-day period following the due date, the delinquent obligation would also become payable to the market administrator. Such handler also would be required to make payment through the market administrator for order obligations until all payment provisions of the order had been met for 3 consecutive months.

Data presented at the hearing confirm that handlers have been late in making payments for producer milk under each of the 3 orders. Also, handlers have been late in making payments to the producer-settlement fund of the Central Arkansas order and to the administrative and marketing service funds of the Fort Smith and Central Arkansas orders. The data illustrated a wide range of payment practices by handlers. Some handlers were paying their obligations on time while other handlers were paying their obligations more than 15 days late.

Several handlers took the position at the hearing that not all payments listed as being paid from 1 to 5 days late should be considered as late payments. They argued that the data should have listed all payments made by mail that were postmarked on or before the due date as being made on time. Instead, in the tabulation of the data such payments were listed as being late because payment was not considered to have been made until it was received by the addressee. In that regard, payment made by a handler to a bank's postal lock box for the account of a cooperative was tabulated as being received when the bank posted such payment to the cooperative's account.

Even if one were to accept the handlers' premise that all payments postmarked on or before the due date were made on time, one would eliminate

at the most only the payments listed as being over due from 1–5 days. However, one would presume that those payments listed as being overdue from 6–10 days, 11–15 days and more than 15 days were most likely to have been postmarked after the due date and, consequently, were overdue by the handlers' own standards for timeliness.

It is essential to the effective operation of each of the orders that all handler payments for obligations under the respective orders be made promptly. Under the payment provisions contained in the Memphis order, it is necessary that all handlers pay the total use value of milk to the market administrator on time. Through this means, money is made available to the market administrator so that he can pay producers the monies due them on the dates prescribed. The success of this arrangement depends on the solvency of the fund from which the payments are made.

Under the Central Arkansas order, it is essential that handler obligations to the producer-settlement fund be paid on time. Handlers with higher than market-average Class I utilization pay any excess of the value of their producer milk over its value at the uniform price into this fund. Payments into this fund must be made on a timely basis since the market administrator must immediately transmit such funds to handlers with a lower than market-average Class I utilization to enable them to include such payment in the uniform price they pay to producers.

Under the Central Arkansas and Ft. Smith orders, it is also necessary that handlers make partial and final payments to producers and cooperative associations on a timely basis. Producers should not be expected to wait beyond the scheduled times for their milk payments. Delayed payments not only foster uncertainty and discontent among producers but also place them in a difficult position with respect to meeting their own financial obligations on a timely basis.

The prompt payment of accounts relating to the administrative expense funds and to the marketing service funds of the 3 orders is essential to the performance by the market administrator of the various administrative functions prescribed by the respective orders. Delinquent payments to these funds could impair the ability of the market administrator to carry out his duties in a timely and efficient manner.

Payment delinquency also results in an inequity among handlers. Handlers who pay late are in effect borrowing money from producers. In the absence of any late-payment charge, handlers who are delinquent in their payments have a financial advantage relative to those handlers making timely payments.

Without a late-payment charge handlers have little incentive to make their payments to the market administrator on time. Enforcement action may be taken, of course, to seek strict handler compliance with the payment dates. However, this is a cumbersome administrative route and the practicality of such action becomes questionable in the case of handlers who are only several days late. While the charge adopted herein may not result in strict compliance by all handlers, it should provide handlers substantial inducement to make their payments to the market administrator, producers and cooperative associations on time.

The late-payment charge should be established at the rate of one percent per month of the unpaid balance. If the charge is to have any impact on handlers in terms of encouraging prompt payments, it should be an amount that approaches what a delinquent handler would be charged by commercial banks for money borrowed for short-term purposes. Otherwise, handlers who may have financial problems would be encouraged to delay their payments, knowing that the charge under the order is cheaper than borrowing money commercially at a higher loan rate.

While present economic conditions might warrant the adoption of a late-payament charge greater than one percent per month for accounts that are overdue from 15 to 30 days, AMPI did not propose any higher rate. However, it should be noted that the late payment charge adopted herein would be the same whether payment is one day, three days or a month late. If a handler decides to delay payments for up to 3 days, the charge of 1 percent per month of the unpaid balance would be more than the handler probably would be charged by commercial banks for money borrowed for such period of time. If a handler delays more than 3 days in paying his obligation, he would then be required under the Fort Smith and Central Arkansas orders, as discussed elsewhere in this decision, to channel his payments to producers through the market administrator. Such payment requirement in conjunction with a late-payment charge should be sufficient inducement for handlers under such orders to pay by the due date.

The proposal to apply the late-payment charge on a daily rate basis for the first three days that a payment is overdue should not be adopted. If late-payment charges were treated on a money market basis, the order would represent a banking service for handlers who desire to use order obligations as a source of borrowed funds. This is not the intended purpose of the late-payment charge. Rather, it is to be a charge on overdue accounts which is sufficiently large to induce handlers to pay their obligations under the order on time.

A further reason for not adopting the proposed two-tiered charge on overdue accounts is that the payment plan under which such charges would apply would not be compatible with the use of fixed dates in the payment of producers. Under the "flexible" payment schedule proposed by a representative of MIF, a handler would have the option of paying an order obligation within 3 days after the "due" date and being assessed a nominal charge for the credit extended for such period of time. However, a lag of up to 3 days in the "due" date would require that a similar lag be incorporated in the scheduled payment dates for producers. Producers have been accustomed to receiving payment on a fixed schedule and to the extent possible, such producers should continue to receive payment on a fixed schedule. For this reason, fixed dates should be continued for handlers to make payment of their obligations under the order so that producers may continue to receive payment on a fixed schedule.

The spokesman for MIF requested that payments be considered as having been made for purposes of meeting the payment requirement if received by an agent mutually agreeable to the handler, the cooperative or producers and the market administrator. The current provisions of the 3 orders do not preclude the use of an agent as an intermediary under the conditions proposed by the handlers' spokesman. Under the circumstances, their is no reason to modify the orders as proposed.

In conjunction with establishing a charge on overdue accounts in the 3 orders, it is essential that each of the orders make it clear when the charges would apply. In general, handlers should be permitted to pay order obligations by mail. Payments by mail that are postmarked by the U.S. Postal Service on or before the due date of the obligation should be considered as having been made on time. With regard to a mailing in which the postage date is applied by a handler's postage meter, such method of payment would not provide acceptable proof of mailing on that date since a handler would be able to predate the envelope. However,

payments to the producer-settlement fund of the Central Arkansas order should actually be received by the market administrator on or before the due date specified in the order. This should be the case also for payments to the market administrator of the Memphis order that represent monies due producers for milk received by such handlers. Also, in the event that handlers under the Fort Smith and Central Arkansas order who because of late payment of order obligations are required to make payments through the market administrator for milk from producers, such payments to the market administrator must actually be received by him on or before the due date. These changes are necessary to assure that the market administrator has received payment from handlers in time for him to make the payments on the following day from the producer-settlement fund of the Central Arkansas order, to make payments to producers under the Memphis order, and, in the event of late payments by handlers under the Fort Smith and Central Arkansas orders, to make payments to the producers supplying such handlers.

In conjunction with changing the orders to require that payments by handlers to the producer-settlement fund and to the market administrator for payments of monies due producers must be received by the due date, the due date should be adjusted to minimize the impact of such changes upon handlers. In the Central Arkansas order, the due date for payments to the producer-settlement fund should be changed from the 12th to the 14th of the month. Under the new payment schedule, it is unlikely that handlers making payment by mail will need to mail the payment at any earlier date than handlers who are making timely payment under the current order provisions are required to make such payment.

As an adjunct to delaying the date by which payments must be made to the producer-settlement fund, a similar 2-day delay should be made in the date by which the market adminstrator must make payment from the producer-settlement fund (13th to 15th), in the date by which handlers must make final payment to a cooperative for milk of its members (13th to 15th) and in the date by which handlers must make final payment to producers who are not members of a cooperative (15th to 17th).

It is not necessary that conforming changes be made in the dates by which handlers must make partial payments to cooperatives and producers. Such payments would be made directly by the handler to cooperatives and producers and, thus, they would not be dependent upon the handler's timely receipt of funds from the producer-settlement fund.

In the Memphis order, the due date for handlers to pay the classified use value of milk (the final monthly payment) to the market administrator should be changed from the 12th to the 14th of the month in conjunction with revising the order to require that payments must be received by the market administrator by the due date. In connection with delaying the date by which final monthly payments must be made to the market administrator, a similar 2-day delay should be provided in the date by which the market administrator must transmit such funds to cooperatives (13th to 15th). However, the date by which the market administrator must make final payment to producers who are not members of a cooperative need not be delayed for 2 days beyond the present payment date. A one-day delay (15th to 16th) should permit the market administrator sufficient time in which to make the necessary payments.

The date by which the Memphis order handlers must pay the market administrator the partial payment due producers should be changed from the 25th of the month to the 2nd day prior to the last day of the month. This change is necessary because the order is being revised to require a handler to make payments to the market administrator of the partial payments due producers so that payment is received by the market administrator on or before the due date. The market administrator should be required to make payment on the following day of such partial payments to cooperatives on behalf of their members. Payments to producers for whom a cooperative is not collecting payments should be made by the market administrator on or before the last day of the month.

There is no need to make changes in the dates by which handlers under the Fort Smith order are to make payments to producers. The method of paying producers under that order involves only a single step and, thus, permits producers to be paid at an earlier date than is possible under the Memphis and Central Arkansas orders. Under the Fort Smith order, which provides for an individual handler pool, handlers pay producers directly for milk. Under the Memphis order, payments by handlers are made to the market administrator who then makes payment to producers. Under the Central Arkansas order, a marketwide pool order, a producer-settlement fund is used to return a uniform blend price to producers. Such payment procedure involves two additional steps that are not required under an individual handler pool—payments are made to the producer-settlement fund by handlers whose Class I utilization exceeds the marketwide average and then payment is made from the fund to handlers whose Class I utilization is less than the marketwide average.

If a handler under the Fort Smith or Central Arkansas order is require to make payment for producer milk through the market administrator as the result of late payments, the respective orders should require that such payments be received by the market administrator the day prior to the date payment is otherwise due producers. This is necessary in order that payments to producers not be delayed as the result of a handler being required to channel payment for producer milk through the market administrator.

Under each of the three orders, the date by which payments need to be made to the market administrator by handlers for administrative expenses and deductions from payments to producers for marketing services performed by the market administrator should not be changed. Also, the date by which handlers must transmit marketing service deductions to a cooperative association should not be changed. Thus, handlers would need only to make payments by mail in sufficient time so that the letter containing the payment is postmarked on or before the due date.

Each of the orders should also provide that if the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business. Also, in the event the application of such provisions should result in a delay in payment to the market administrator, the corresponding payments by the market administrator to handlers, cooperative associations and producers may be delayed by the same number of days. Likewise, if payment from the producer-settlement fund by the market administrator to a handler is delayed, the handler may delay making the final payment to producers by the same number of days.

A proposal by the spokesman for MIF that the late-payment charges accrue to the administrative expense fund maintained by the market administrator should be adopted. Proponent supported this proposal on the basis that handlers who are prompt in meeting payment obligations are, in effect, being assessed

for expenses incurred by the market administrator in obtaining compliance for delinquent handlers. In addition, proponent contended that in case of late payments to a producer there would be an incentive on the part of the producer to continue delivery of milk to the delinquent handlers because of a belief that he would be reimbursed for the delay in payment.

In case of delinquent handlers, money is spent by the market administrator in determining the amount of late-payment charges and in collecting such payments. The money for expenditures of this type comes from the administrative assessment fund. Thus, the competitors of the noncomplying handlers who pay assessments to this fund are bearing the administrative costs of dealing with the delinquent handler. Therefore, it is reasonable that the late-payment charges assessed on noncomplying handlers be used to help defray these administrative costs.

As an inducement for handlers to make payments to producers on time, it is appropriate that the charge on overdue accounts payable to producers accrue to the adiministrative assessment fund. If the late-payment charge were added to the amount that handlers owe producers, it would likely result in such producers being less concerned whether they are paid on time. Thus, it could be counterproductive to the purpose sought to be achieved by the late-payment charge. Moreover, if a charge of 1 percent were made with respect to a payment that was only a few days late, it would represent a higher value than the cost of money borrowed from commercial sources for the short time span. Thus, producers might prefer to be paid several days late in order to receive a late-payment charge and thus not be inclined to press handlers for timely payments. Since the late-payment charge is to be an inducement to meet the payment date, the charge should accrue to the administrative assessment fund of the market administrator who is charged with the responsibility of administering the payment transaction.

As proposed at the hearing, the Central Arkansas order should be revised to apply a late-payment charge on overdue obligations of a handler operating a partially regulated distributing plant. Under certain conditions such a handler may be required to make payments to the producer-settlement and administrative expense funds. In the absence of any late-payment charge, a partially regulated handler could have an advantage on his order obligations relative to fully regulated handlers who are subject to the additional charge when they fail to make timely payments. Also, as pointed out earlier, prompt payments to the administrative expense fund are essential to the market administrator's performance of his duties.

A witness representing a handler regulated under the Central Arkansas order expressed the view that the late-payment charge adopted herein would violate Arkansas usury laws which establish a nine percent maximum rate of interest. In addition, another handler contended in its brief that late payment charges, which the proponent characterized as a penalty, cannot be adopted because they are not authorized by the Act, which he claimed provides for an administrative penalty (7 U.S.C. 610(c)) at variance with the proposal.

With respect to these views, the charge on overdue accounts does not represent interest for borrowed funds. As indicated throughout the decision on this issue, the charge is applied if payments are not made on dates specified in the orders and are intended to encourage prompt and timely payments of obligations incurred under the orders. Furthermore, such a provision is authorized by section 608(c)(7)(D) of the Act which specifies that an order may contain various terms that are incidental to, and not inconsistent with, the terms explicitly authorized by the Act. The charge on overdue accounts adopted herein is considered essential to the effectuation of the payment provisions of the orders.

3. Maximum Administrative Assessment Rate Under the Memphis, Fort Smith and Central Arkansas Orders.

The maximum assessment rate for the administration of each of the three orders should be increased from 4 cents to 6 cents per hundredweight.

As required by the Act, funds for the operation of the market administrator's office, except for marketing services, are obtained through an assessment paid by handlers. The amount of each handler's monthly assessment is dependent upon the quantity of milk that he receives and the assessment rate effective for such month. The assessment rate, within the maximum amount specified in the order, is determined by the market administrator, subject to the approval of the Secretary, according to his projections of the level of monthly producer receipts and the costs of operating his office. The actual assessment rate since 1975 in each of the three orders has been 4 cents per hundredweight, the maximum allowable under the orders.

It was proposed by the principal cooperative association representing producers supplying the three markets that the maximum rate of administrative assessment be increased 2 cents per hundredweight in each of the orders. A Central Arkansas handler supported the proposed 2-cent increase.

The assistant market administrator of the three orders testified about the current assessment rate. He stated that in view of increasing office expenses, which he estimated would approximate 12 percent per year for 1980 and 1981 as a consequence of inflationay pressures, and a relatively constant level of producer receipts on which income for administration of the order is dependent, the present 4-cent limit would not provide sufficient funds during the next several years to administer the three orders effectively. The assistant market administrator pointed out that the present maximum rate has been in effect since the orders were promulgated (Memphis 1951; Fort Smith 1952; and Central Arkansas 1955).

Generally, market administrators are expected to maintain a reserve fund that would cover their operating expenses for up to six months. The monies in the reserve fund normally would be needed to carry out the market administrator's responsibilities in the event an order is withdrawn for any reason. If the reserve fund exceeds projected operation expenses for a greater length of time, then the administrative assessment is usually suspended or the rate lowered until the reserve fund has been reduced.

As noted by the assistant market administrator, a reserve operating fund approximating 70–80 percent of the yearly adminstrative expenses is needed to assure that sufficient funds are available to continue the needed administrative work in the event an order is withdrawn for any reason. Such level of reserve funds is not attainable under the current maximum provided under the three orders. Continuation of the current level of funding would result in the operating balance declining to 63 percent and 44 percent of the yearly operation expenses by the end of 1980 and 1981, respectively.

To assure that the market administrator will have sufficient funds to enable him to administer the three orders and maintain the necessary reserves, the maximum assessment rate should be increased to 6 cents. If experience indicates that at a later date a lower rate will be sufficient to provide adequate funds for the administration of these orders, provision is made so that the Secretary may reduce the rate

without the necessity of amending the order.

4. Maximum Marketing Service Deductions Under the Fort Smith and Central Arkansas Orders

The Fort Smith and Central Arkansas orders should provide for a maximum deduction from payments to producers of 7 cents per hundredweight for marketing services furnished by the market administrator.

Deductions for marketing services are used by the market administrator to conduct a marketing service program for producers supplying the market who do not have such services provided by a qualified cooperative association. Such services include the verification of weights and butterfat tests of milk and providing market information. The maximum rate for such services in the Fort Smith and Central Arkansas markets is now 5 cents per hundredweight.

AMPI proposed and testified in support of increasing the maximum deductions for marketing services in the Fort Smith and Central Arkansas orders from 5 cents to 7 cents per hundredweight. The spokesman for the cooperative held that the increase was needed due to "inflation".

For the years 1975–1979 the expenses of providing marketing services by the market administrator for the Central Arkansas order, the only one of the three orders where producers receive marketing services provided by the market administrator, averaged $13,100 per year. The yearly marketing service expenses for 1980 and 1981 were estimated to be $13,650 and $15,350, respectively. By the end of December 1981, it was projected that the operating balance on hand would have declined to $6,450, or 42 percent of the operating expenses for the year.

The assistant market administrator testified regarding the proposed increase. He indicated that much of the work in the marketing service program involves travel. It was his opinion that in view of the increased costs to perform travel a 7-cent per hundredweight rate was warranted.

The 7-cent rate which was proposed should permit the market administrator to conduct an adequate marketing service program for those producers not receiving such services from a cooperative association. It is also noted that the Memphis order, which is administered by the same individual who administers the Fort Smith and Central Arkansas orders, currently provides for 7 cents per hundredweight as the maximum charge for marketing services. If experience indicates that the services can be performed at a lesser rate, provision is made whereby the Secretary may adjust the rate downward without the necessity of a hearing.

5. Payment of Producers and Cooperative Associations Through the Market Administrator Under the Fort Smith and Central Arkansas Orders

The Fort Smith and Central Arkansas orders should be amended to provide that any handler who is more than 3 days late in the payment of any obligation under the order shall pay all order obligations for producer milk to the market administrator who, in turn, would distribute such money (in terms of the uniform price(s)) to producers and cooperative associations. Such handler would be required to make payments to producers through the market administrator for a period of 3 consecutive months before he would be permitted to again pay producers directly. Handlers who pay order obligations by the due date or within 3 days after the due date could continue to make payment to producers and cooperative associations directly. Those handlers who have not paid their order obligations by the due date would be assessed a late-payment charge as discussed herein under the issue of charges on overdue accounts.

Under the Fort Smith order, which provides for an individual-handler pool, the handler currently pays the uniform prices(s) directly to the producers who supply him with milk.

The Central Arkansas order, which provides for a marketwide pool, also provides for the direct payment of producers by the handlers who receive their milk. Under this arrangement, part of the money due producers from handlers with higher than market-average Class I utilization is used in paying producers supplying handlers with less than market-average Class I utilization. This exchange of money is accomplished through a "producer-settlement fund" maintained by the market administrator. Handlers with higher than market-average Class I utilization pay any excess of the value of their producer milk over its value at the uniform price into this fund. Other handlers receive from the fund payments that are included in the uniform price they pay to their producers.

AMPI proposed that the market administrator collect from handlers regulated under the Central Arkansas and Fort Smith orders all order payments due producers as he now does under the Memphis order. However, handlers under the three orders could elect to pay the producers supplying them with milk. As proposed by the cooperative, any handler who was not delinquent with respect to any of his payment obligations and who wished to pay his own producers would pay his full obligation to the market administrator. Upon receipt of the proper payment, the market administrator then would transfer sufficient money to the handler so that he could pay his producers. Alternatively, the handler could make payment to individual producers prior to the time such amounts are payable to the market administrator. In such instance, the handler would then offset such amounts paid to individual producers against any obligation due the market administrator for such producer milk.

The cooperative proposed that payment not be made to any handler by the market administrator if he determines that the handler is or was delinquent with respect to any payment obligation under the order regulating such handler. Once a handler is delinquent in the payment of his order obligations, payment would not be made by the market administrator to the handler for payment to any producer until the handler had met all prescribed payment obligations for 3 consecutive months. In this regard, the cooperative proposed that the market administrator consider not only payments from the handler to the market administrator but whether payments by the handler to the individual producers had been made by the specified due dates.

The cooperative requested that a producer-settlement fund be provided in each of the three orders as a mechanism to receive the money due producers from handlers. The only purpose of the fund in the Memphis and Fort Smith orders would be to serve as a conduit to move money from handlers to the market administrator who would then transmit such funds to producers and cooperative associations.

The cooperative proposed that the market administrator make payment to a cooperative association that so requests with respect to those producers for whom it markets milk. It also proposed that the market administrator make payment to those producers for whom the cooperative association is not collecting payments unless the handler receiving the producer's milk requests that such payments be made to him for subsequent payment to producers.

Proponent urged the adoption of its proposed payment arrangements on the basis that it would provide handlers with a stronger incentive for making

prompt payment of their order obligations. The cooperative claimed that since handlers tend to pay the market administrator on a timely basis all producer payments should be channeled through him rather than having handlers pay producers directly. Also, proponent contended that late payments by certain handlers result in an inequitable situation for those handlers making timely payments. This is because the delinquent payers are using money due producers to overcome cash flow problems while the prompt payers must borrow money or use their own capital.

A representative of a handler who operates a pool plant under the Memphis order and a partially regulated distributing plant under the Central Arkansas order opposed the channeling of payments through the market administrator. The representative objected to "strait-jacketing the entire industry" in an effort to stop the occasional late payment by a handler. In his opinion, an interest penalty proposed for adoption in the 3 orders by the representative of MIF would provide sufficient incentive for handlers to make timely payments.

A representative of a handler that operates a distributing plant regulated under the Memphis order, which provides for the market administrator to make payments to producers and cooperatives, opposed the adoption of such payment requirements under the Central Arkansas order. In his opinion, the evidence presented by proponents did not establish conclusively that handlers were "delinquent" in the payment of obligations to the market administrator, producers and cooperative associations.

The spokesman for MIF proposed on behalf of the majority of the handlers in the 3 markets that handlers be required to make payment of order obligations through the market administrator only under certain conditions. As an adjunct to a two-tiered charge on overdue accounts previously discussed herein, he proposed that if a handler is up to 3 days late on 3 occasions during the preceding 12 months in paying his order obligations, the handler should be required to make all prescribed payments to the market administrator for 3 consecutive months. A handler who makes payment more than 3 days late would also be required to make all prescribed payments to the market administrator for 3 consecutive months.

If the Fort Smith and Central Arkansas orders are to serve the intended purpose of promoting orderly marketing in the respective marketing areas, it is essential that handlers under such orders pay their obligations on a timely basis. Currently, handlers have the use of producer milk for considerable periods of time before any payments for such milk are due. Producers should not be expected to wait beyond the scheduled times for their milk payments. Delayed payments not only foster uncertainty and discontent among producers but also place them in a difficult position with respect to meeting their own financial obligations on a timely basis.

From the standpoint of handlers, also, it is necessary that all order obligations be paid on a timely basis. Otherwise, handlers who are in compliance would be at a competitive disadvantage with delinquent handlers who are using monies due producers as a source of funds for operating purposes.

For these reasons, the Fort Smith and Central Arkansas orders should be structured to encourage prompt payment by handlers of order obligations. While the institution of late-payment charges under the orders should provide a strong incentive for handlers to pay their order obligations when due, some further incentive should be provided. In this regard it is noted that the principal cooperative association currently imposes a late-payment charge upon accounts due the cooperative. However, the incidence of late payments to the cooperative has continued. On the basis of that experience, it is concluded that the orders should provide an additional payment requirement for a handler who might otherwise decide to use money due producers as a source of funds and thus intentionally pay his order obligations late.

The additional payment requirement adopted herein is an alternatve that was proposed by MIF's representative. The representative proposed that any handler who is more than 3 days late in the payment of any order obligation should not be permitted to pay producers and cooperative associations directly for 3 consecutive months. During such 3 months the handler would be required to channel such payments through the market administrator. Except for a 3-day delay before this payment requirement is invoked the proposal on behalf of handlers is essentially the same as the payment arrangement proposed by proponent cooperative.

Producers and handlers in the two markets are in general agreement that both a charge on overdue accounts and the payment of order obligations to the market administrator are effective tools for obtaining compliance with order provisions. The two groups differ basically as to when each of these payment provisions should apply. MIF's proposal that handlers be given a 3-day grace period before being required to make payments to producers through the market administrator should provide an effective enforcement tool when used in conjunction with a charge on overdue accounts that applies the day after an obligation is due. By structuring an order in this fashion, handlers have 2 incentives for making timely payments. Thus, if a handler pays his obligation by the due date, he avoids a charge on overdue accounts. If he pays his obligations within 3 days of the due date, he may continue to pay producers and cooperative associations directly.

Also, the payment plan adopted herein tends to be self-policing. A handler would not be permitted to make payment directly to producers and cooperative associations if he fails to pay any order obligations within 3 days of the due date. Under this procedure, a producer or cooperative association would be aware that a handler has failed to pay an order obligation and thus may represent a financial risk with respect to future deliveries of milk to the handler.

Presently, under the Central Arkansas order a handler may pay his producers the blend price and at the same time fail to pay an amount due the producer-settlement fund. In the absence of any knowledge of the handler's financial difficulties, producers presumably would continue to ship milk to the handler. Only when the handler's financial problems become so great as to result in nonpayment to his producers would the producers realize the possible need for seeking a different outlet for their milk. Under the adopted payment procedure, producers under the Central Arkansas order would be aware of the handler's financial difficulty in the first month following nonpayment. They then would be able to consider on a more timely basis the possible need for making other arrangements for the sale of their milk before their loss as a result of nonpayment mounts to the point that they would be placed in a severe economic bind.

Under the adopted payment procedure, it is imperative that the payments received by the market administrator from handlers represent sound money. This is necessary, of course, under the present payment arrangement. However, with the payment schedule adopted herein, the market administrator will need to make payments from the producer-settlement fund of the Central Arkansas order to certain handlers the day after the payments are due the fund. Such

payments will have to be made with the belief that the checks received from handlers and deposited in the producer-settlement fund are, in fact, good. Time will not permit the clearance of such checks through the banks prior to the withdrawal of money from the producer-settlement fund.

Also, in the event payments by handlers regulated under the Central Arkansas and Fort Smith orders are more than 3 days late, such handlers would be required to channel their payment for producer milk through the market administrator. Under such procedure substantially greater amounts of money would be transferred in and out of accounts maintained by the market administrator and, as a consequence, the receipt of a bad check of a substantial sum could render such an account insolvent.

The attached order does not prescribe the specific means by which handlers shall make payment to the market administrator. The need for such specificity should be based on actual experience in the market. As long as handlers make full payment by the prescribed payment dates and their checks are good, there is no problem. However, if the market administrator, because of prior experience or for other reasons, does not have reasonable assurance that payments tendered would represent sound money, it is necessary that he have the administrative discretion to prescribe the means of acceptable payment.

Under the terms of the order, the market administrator has the authority to make rules and regulations to effectuate the terms and provisions of the order. Should there be an urgent need for greater specificity with respect to the procedures for making payments, this may be accommodated through the promulgation of appropriate administrative rules with the approval of the director of the Dairy Division and in consultation with the local industry.

6. Payments for Milk From Cooperative Association Plants Under the Memphis and Central Arkansas Orders

The Memphis and Central Arkansas orders should be revised to specify that pool plant operators under the respective orders who receive bulk milk during the month from a pool plant operated by a cooperative association shall make a partial and final payment to the cooperative for such purchases. Handlers should be required to make the partial and final payments by the same dates as specified for handlers receiving milk directly from producers or a cooperative acting as a bulk tank handler. The partial payment by the handler for the months of March–July, which would apply to milk received during the first 15 days of the month, should be at the Class III price for the preceding month.

The partial payment by the handler for the months of August–February should be at the Class III price for the preceding month plus $1.00 per hundredweight, and should be further adjusted by the location adjustment applicable at the receiving plant. The buying handler should be permitted to adjust the partial payment rate in any month to reflect the butterfat content of the milk purchased. The final payment should be based on the classified use value of all bulk fluid milk products received during the month from the cooperative's plant, less the amount of the partial payment.

Payment by the handler under each order should be made in the same manner as for milk that is received directly from the farm. Under the Memphis order, payments by the handler should be made to the market administrator who would then transmit such payments to the cooperative association. Under the Central Arkansas order, payments by the handler should be made directly to the cooperative association unless the market administrator determines the handler was more than 3 days late in making any payment obligation under the order. In that event, as previously discussed in this decision under the issue dealing with the payment of producers and cooperative associations through the market administrator, the handler would be required to make payment of such obligation to the market administrator for 3 consecutive months before the handler would again be permitted to pay the cooperative directly.

The principal cooperative association supplying the Memphis and Central Arkansas markets proposed that pool plant operators under each order who received bulk milk during the month from a pool plant operated by a cooperative association should be required to make 2 partial payments and a final payment to the market administrator for such milk. The 1st and 2nd partial payments, which would apply to receipts during the first 15 days and the remaining days of the month, respectively, would be at the class prices under the respective orders adjusted by the applicable butterfat differential. The classification to be accorded such receipts would be based upon the classification accorded such receipts under the transfer provisions of the respective orders. If any of the milk transferred during the 1st 15 days of the month is classified as Class II or Class III milk, the latest available class prices would be used to value such milk. Such pricing procedure would be necessary because the partial payment for milk received during the 15 days of the month is due at the close of such month while the class prices for milk in surplus uses during such month are not available until the following month. The final payment would be based on the classified use value of all fluid milk products received during the month from the cooperative's plants less the value of the 2 partial payments made for such receipts. The market administrator, upon receipt of the partial and final payments, would transmit such payments to the cooperative.

While there was no direct opposition to structuring the Memphis and Central Arkansas orders to provide for specific payment provisions for such bulk milk purchases, there was opposition to the requirements that payments for such milk be channeled through the market administrator and that settlement for such purchases be made through 2 partial payments and a final payment. In this regard, a representative of a majority of the handlers opposed the adoption of any provision that would require a handler who is making timely payments to channel payments for producer milk through the market administrator on a regular basis. As previously noted, the representative proposed instead that such payment procedure be applied if a handler is more than 3 days late in making payments or if a handler is from 1 to 3 days late in making payment three times during a 12-month period. The representative proposed that the proposed payment procedure be used in conjunction with a two-tiered interest charge for late payments (the details of such interest charge are set forth in this decision under the issue dealing with late-payment charges).

Currently, milk marketed under the Central Arkansas order by the proponent cooperative is moved to distributing plants directly from the farm. Prior to February 1980, some milk under the order was moved to pool distributing plants, either on a regular basis or a supplemental supply basis, from the cooperative's supply plant at Pittsburgh, Kansas. Under the Memphis order, some milk is moved to distributing plants, either on a regular basis or a supplemental supply basis, from the cooperative's supply plant in Martin, Tennessee. The primary milk supply for the Memphis market, however, is moved to distributing plants directly from the farm.

Irrespective of the supply arrangements used, the producers involved are supplying milk for fluid markets and should be assured of receiving payment for their milk. Such assurance is essential to the orderly marketing of milk and the maintenance of an adequate supply of milk for consumers. The incorporation within the respective orders of specific payment requirements by handlers for bulk milk received from a cooperative association will enhance the ability of the cooperative association to collect for such receipts. By providing specific payment requirements under each order, late-payment charges would be applied by the market administrator on any payment that is not made on or before the due date. Furthermore, as discussed elsewhere in this decision, any handler who is more than 3 days late in making any payment obligation under the order would be required to channel his payment for milk received directly from the farm through the market administrator. Such arrangement likewise should apply if a handler is more than 3 days late in paying for bulk milk received from a pool plant operated by a cooperative.

There is no reason why milk that is received at a cooperative's plant and then shipped to a pool plant should be treated differently for payment purposes than milk shipped directly from a member's farm to a pool plant. Accordingly, handlers receiving bulk fluid milk products from the plant of a cooperative association should be required under the Memphis and Central Arkansas orders to make a partial and a final payment to the market administrator and the cooperative association, respectively, by the same dates as specified for handlers receiving milk directly from producers or a cooperative acting as a bulk tank handler.

The partial payment which would apply to receipts during the first 15 days should be at the same rates that apply on receipts of milk directly from the farm of a member producer of a cooperative association. The partial payment for the months of March-July should be at the Class III price for the preceding month. For the months of August-February, the partial payment should be at the Class III price for the preceding month plus $1.00 per hundredweight, and should be further adjusted by the location adjustment applicable at the receiving plant.

The orders should provide that the buying handler may adjust the partial payment rate during any month to reflect the butterfat content of the milk purchased if he desires to do so. This option will benefit handlers who receive skim milk from a cooperative's pool plant. In such situation, unless the partial payment rate is adjusted downward from the price level for milk containing 3.5 percent butterfat, the handler would be paying in excess of the classified use value of such milk. At the time of the final payment, the handler then would be due a credit from the cooperative. This unnecessary additional transaction can be avoided by allowing a handler to adjust his partial payment to reflect the butterfat content of milk purchased from a cooperative's plant.

The final payment should be based on the classified use value of all fluid milk products received during the month from the cooperative's plant less the value of the partial payment made for such receipts. Upon receipt of the partial and final payments, the market administrator of the Memphis order would then transfer such funds to the cooperative. Under the Central Arkansas order, the handler would make such payment directly to the cooperative as long as he is not more than 3 days late in the payment of any order obligations.

With regard to the Class I price to be used in computing a handler's payment for plant milk received from a cooperative, AMPI proposed that such price should be the higher of the Class I prices applicable at the plant of the handler or the cooperative, plus the administrative assessment. Under such proposal, the Class I price applicable at the location of the transferee-plant would apply if milk were transferred from a lower-price zone to a higher-price zone. Conversely, the Class I price applicable at the location of the transferor-plant would apply if milk were transferred from a higher-price zone to a lower-price zone. Proponent contended that payment at the higher price is necessary to be consistent with the Act which states in part that a cooperative that is reblending the proceeds from the sale of its members' milk may not sell milk to any handler in any market at less than the class prices applicable under the order.

The proposal to require payment at the higher of the prices applicable at the transferee-plant or the transferor-plant should not be adopted. Rather, payment by handlers for milk transferred from a cooperative's plant should reflect the Class I price applicable at the location of the transferee-plant regardless of whether the milk is shipped to a higher-price zone or lower-price zone.

Under normal circumstances, transfers of Class I milk from a cooperative's plant to a distributing plant would be from a lower-price zone to a higher-price zone. In such case, the distributing plant operator should be required under the Central Arkansas order to pay the cooperative directly, and under the Memphis order to pay the cooperative through the market administrator, for such milk at the Class I price applicable at the distributing plant. This price would generally reflect the order value of milk at the cooperative's plant plus the cost of transporting it to the distributing plant. This is the same price that would apply to Class I milk received at the distributing plant directly from the farms of producers or from a cooperative acting as a bulk tank handler.

Although it is unlikely in these markets under present conditions, Class I milk could be transferred from a cooperative's pool plant located in a higher-price zone to a pool distributing plant in a lower-price zone. For this type of milk movement, the cooperative in its capacity as a pool plant operator receiving milk at its plant, should be required to account to the pool at the Class I price applicable at its plant. However, it would be inappropriate for the order to enforce such price in the final settlement for such milk between the distributing plant operator and the cooperative association. This would result in the distributing plant operator having to pay a higher Class I price for milk received from producers via a cooperative's plant than for milk received from producers either directly or through a cooperative acting as a bulk tank handler. Also, his order Class I price on such transfers would be higher than the order Class I price applicable to milk from producers by other regulated handlers in the same location. This would not result in uniform class prices to handlers. Requiring payment to the cooperative at the Class I price applicable at the location of the transferee-plant satisfies the requirement that a cooperative association may not sell milk at less than class prices.

It is recognized that requiring the cooperative association to account to the pool at the higher Class I price applicable at its plant in this case probably would make the transfer uneconomic to the cooperative. The cooperative would have to decide, of course, if it should undertake this kind of milk handling arrangement.

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8. Pool Supply Plant Qualifications Under the Central Arkansas Order

No changes should be made on the basis of this record in the percentage of milk receipts that a supply plant must ship to pool distributing plants to attain pool plant status. However, the provisions should be modified to permit the Director of the Dairy Division (Agricultural Marketing Service, U.S. Department of Agriculture) to temporarily increase or decrease the supply plant shipping percentage by up to 10 percent points if it is determined that additional shipments are neded or that excessive shipments are likely to be made. Also, the month of September should be added to the current qualifying months during which supply plants must make shipments to pool distributing plants to attain pool plant status during other months of the year without regard to shipments. As a result of such change, a supply plant that is pooled during each of the months of September through January could be designated as a pool supply plant for the following months of February through August regardless of its shipments to distributing plants during such months.

The order currently provides pool status to a supply plant that ships to pool distributing plants not less than 50 percent of its monthly receipts of producer milk and milk received from cooperative associations in their capacity as bulk tank handlers. A plant that is pooled as a supply plant during each of the months of October through January is designated as a pool plant for the following months of February through September if written application is made to the market administrator. The order also provides pool status to a plant operated by a cooperative if member producers deliver 50 percent or more of their milk to pool plants of other handlers and the cooperative's plant ships 25 percent or more of its receipts during the month to distributing plants. A plant that is pooled as a supply plant during each of the months of October through January is designated as a pool plant for the following months of February through September if written application is made to the market administrator.

AMPI proposed that the performance standards for pool supply plants operated by a cooperative or proprietary handler be increased and applied during each month of the year. Under the proposal a supply plant would have to ship not less than two-thirds of its receipts of Grade A milk from dairy farmers (including producer milk diverted from the plant) and cooperative associations in their capacity as bulk tank handlers to distributing plants pooled under the Central Arkansas and other Federal orders. Of the plant's receipts, at least 50 percent would have to be shipped to distributing plants pooled under the Central Arkansas order.

AMPI proposed a tightening of the performance standards on the basis of the relatively tight supply situation in relation to demand that is characteristic of the market. A spokesman for AMPI testified that virtually all milk pooled on the market is delivered to distributing plants for primarily Class I and Class II uses. Market data contained in the record, and relied upon by AMPI, establish that the yearly Class I utilization of producer milk for the Central Arkansas and Fort Smith markets combined was about 87 percent for 1978 and 1979.[2] The combined Class I and Class II utilization of producer milk for the period exceeded 92 percent. Additional data presented by AMPI show that of the total milk pooled under the Central Arkansas order by AMPI for the years 1978 and 1979, about 94 percent was delivered to distributing plants.

AMPI further testified that there is very little variation in the monthly percentage of pooled milk utilized by distributing plants. Consequently, AMPI concluded that because of the yearly tight supply-demand relationship that exists, the performance standards for supply plants should be increased and such standards should be applied throughout the year to assure that distributing plants are adequately supplied with milk. AMPI contended that it is reasonable to require that at least two-thirds of a supply plant's receipts be shipped to distributing plants to demonstrate an adequate performance in supplying this market's fluid milk needs. Also, AMPI contended that such level of performance by supply plants is also reasonable in view of AMPI's performance in supplying the market.

AMPI also testified that it may be necessary for supply plants pooled under this order to ship milk to distributing plants regulated under other orders. For this reason, the cooperative proposed that recognition be given to meeting the 66⅔ percent shipping standard by shipments to other order distributing plants, provided that at least 50 percent of a supply plant's receipts are shipped to plants regulated under this order.

Kraft opposed the proposed higher shipping standards and supported a 50 percent shipping standard during the months of September through January with automatic pooling during the remaining months of relatively greater milk production. Kraft proposed that if there is reason to believe that in a future month higher pooling standards for a supply plant might be necessary, the order should be amended to allow the Director of the Dairy Division to deal with such a situation on a temporary basis. Kraft also suggested that a portion of the supply plant shipping standards be met by the direct shipment of milk from dairy farmers' farms to distributing plants.

Kraft opposed any increase in shipping standards for supply plants on the basis that there is no indication that distributing plants are having difficulties in obtaining a supply of milk sufficient to meet their fluid milk requirements, despite the high Class I utilization that is characteristic of the market. Kraft contended that the market's relatively high Class I use results from marketing practices of AMPI. In its capacity as the principal supplier of milk to the market, Kraft noted that AMPI pools the reserve milk requirements of Central Arkansas distributing plants under other Federal orders to maintain a high Class I utilization in the Central Arkansas market. This is accomplished by associating additional producers with the Central Arkansas market when additional supplies are needed at fluid outlets and disassociating producers from the market and pooling such milk under other Federal orders when it is not needed by plants regulated under the Central Arkansas order.

Kraft testified that the shifting of producers among markets is a marketing practice that is not available to a proprietary handler, such as Kraft. If Kraft operated a supply plant under the order, the company would have to carry the reserve supplies of its distributing plant customers within the market. Thus, Kraft concluded that the current marketing situation that results from marketing practices that are not available to Kraft or other proprietary handlers does not provide a proper basis for increasing the performance standards for supply plants.

Kraft also opposed the performance standard proposed by AMPI on the grounds that such level of performance could result in requiring supply plants to have a greater association with the

[2] Data for the Central Arkansas and Fort Smith orders are combined to prevent the release of confidential information. The combined data, however, should be reasonably representative of the data for the Central Arkansas market since the Fort Smith portion of the combined data on producer receipts represents less than 10 percent of the total receipts of producer milk for the two markets.

market through supplying the fluid milk needs of distributors than is required of distributing plants with high Class II and Class III uses. In addition, Kraft testified that a higher performance level could inhibit the possible entry of new dairy farmer suppliers to the market. In support of that position, Kraft contended that as dairy farmers who furnish the current manufacturing grade milk supply at its manufacturing plant in Bentonville, Arkansas, convert to the production of Grade A milk, such milk will be available as a potential reserve supply for the Central Arkansas and other Federal order markets. However, Kraft contended that an increase in the performance standards, as proposed by AMPI, would preclude this new production as a supply for the Central Arkansas market as long as the dairy farmers continue to supply Kraft.

Although Kraft held that the current 50 percent shipping standard during fall months for supply plants represents an adequate association with the market, it suggested that the Director of the Dairy Division be given the authority to adjust the supply plant performance standard in the event that at some future time an adjustment was needed. Although Kraft presented no specific recommendations regarding the adjustment, it noted that the use of such provison would provide greater flexibility in dealing in a timely manner with any potential changes in supply-demand relationships that could not be predicted at the time of the hearing.

Kraft also suggested that a portion of the supply plant performance standards be met by direct shipments of milk from dairy farms to distributing plants. It claimed that this modification to current provisions would provide the opportunity for increased efficiency and energy conservation in situations where milk supplies are located between a supply plant and the distributing plants. Kraft noted that under current provisions such milk must be picked up at the producers' farms, hauled from the farm to the supply plant (located in the opposite direction of the distributing plant), received at the supply plant, and reloaded for transportation to the distributing plant. In addition to eliminating some of the hauling, Kraft indicated that direct shipments from the farm to distributing plants would eliminate the need to unload and reload milk at the supply plant for the purpose of associating such milk with the market. Kraft was not specific as to the extent to which such direct farm-to-plant shipments should be recognized in meeting the performance standards.

Kraft also opposed the application of performance standards on a year-round basis. It proposed that automatic pool supply plant status during the spring and summer months of relatively heavier milk production be provided for plants that had supplied the market during the fall and winter months of relatively lower milk production. Kraft held that AMPI's proposed monthly shipping requirements represented a substantial deviation in current order provisions and were contrary to the position taken by AMPI at a prior hearing held to consider the merger of the Central Arkansas order with the Memphis and Fort Smith orders. Kraft quoted testimony from such prior hearing concerning the need to recognize seasonality of milk production in establishing pool supply plant standards to prevent the uneconomic movement of milk to distributing plants solely for pooling purposes. In that regard, Kraft contended that because milk production is relatively greater during the period of February through August, supply plants should not be required to make shipments to distributing plants during such months because of the possibility that the milk could not be utilized by the distributing plant.

The purpose of pooling standards for supply plants is to distinguish between those plants substantially engaged in serving the fluid milk needs of the regulated market and those plants that do not serve the market to a degree that warrants their sharing, through pooling, in the market's Class I returns. The standards also must assure that supply plants associated with the market will ship milk to distributing plants at the times and in the quantities needed to meet fluid use requirements. However, supply plant standards should not be so high as to encourage the shipment of substantial quantities of milk in excess of fluid milk needs and should not apply during those months of the year when shipments are not necessary to meet fluid milk requirements.

As previously noted, the order now permits a supply plant that has met the minimum shipping requirements during the months of October through January to qualify as a pool plant during the following months of February–September without having to meet any specified shipments to distributing plants. The automatic pooling feature recognizes that the demand for supply plant milk is usually less during months of relatively high production than in other months. Requiring no shipments during such months for plants with an established association with the market avoids unnecessary, as well as uneconomical, shipments to distributing plants for the sole purpose of maintaining pool plant status. Also, the automatic pooling feature permits those producers who have estalished their association with the fluid market through deliveries to a pool supply plant to share in the market's Class I sales when supply plant milk may not be needed by distributing plants.

At the time of the hearing, there were no supply plants serving the market. A plant operated by AMPI at Pittsburg, Kansas was pooled as a supply plant under the order from September 1978 through January 1980 but has since ceased operations. A plant operated by Kraft at Bentonville, Arkansas is pooled under the Oklahoma Metropolitan order and was indicated by Kraft to represent a potential source of supply to the Central Arkansas market. At the time of the hearing, however, no milk had been shipped from the plant to Central Arkansas distributing plants. Consequently, with no supply plants serving the market, a revision of the supply plant performance standards would have no immediate impact on any handler and also would not be instrumental in making additional supplies of milk available to distributing plants.

Although there are no supply plants serving the market, AMPI is apparently concerned that in the future supply plants could become associated with the market by shipping to distributing plants a much lesser proportion of their receipts than the proportion of AMPI's producer milk that is shipped to distributing plants. AMPI contends that to the extent that supply plants would begin serving the market at the minimum performance standards currently provided in the order, and all other things remained unchanged, the Class I utilization of producer milk and blend prices to producers would decline. Also, AMPI is apparently concerned that the relatively high Class I utilization of producer milk that is maintained in this market throughout the year will provide supply plant operators with the incentive to establish a pooling base primarily as a means to secure a supply of pooled milk for other than fluid milk use.

AMPI, as the principal market supplier, has been able to efficiently tailor the receipts of producer milk to the needs of distributing plants as evidenced by the high proportion of AMPI producer milk that is shipped to distributing plants and the relatively high Class I use that is maintained in the market. However, it must be recognized that the decision to pool this market's

reserve milk supplies on other Federal order markets is a business decision made by AMPI. The fact that AMPI may be concerned that the relatively tight supply and demand situation in this market, which to a large extent is a reflection of AMPI's method of operation, may encourage the pooling of supply plants on the market in the future does not provide a proper basis for providing increased performance standards on a year-round basis. The adoption of higher performance standards and the application of such standards throughout the year should be based on an indication that distributing plants are having difficulty in obtaining adequate milk supplies for fluid use from supply plants. there was no demonstration on this record that any distributing plant is having difficulty in obtaining an adequate supply of milk for fluid needs.

Furthermore, there is no indication on the record of this proceeding to indicate that the current standards for pooling supply plants do not provide a reasonable distinction between those plants that are substantially engaged in serving the fluid needs of the regulated market and those plants that do not serve the market to a degree that warrants their sharing in the market's Class I returns. Therefore, no major changes should be made in the current supply plant pooling standards and the proposal to increase such standards on a year-round basis is denied.

Several minor changes, however, should be made in the current pool supply plant provisions. September should be specified as a month during which supply plants must make shipment to distributing plants to obtain pool plant status. Consequently, a supply plant would have to meet the pooling standards during each of the months of September through January in order to be eligible for automatic pool plant status during each of the months of February through August. Currently, supply plants are not required to make shipments during September and are eleigible for automatic pooling during such month if qualified on the basis of shipments during each of the months of October through January.

Pool supply plants should be required to make qualifying shipments during the month of September because it is a month in which the fluid milk requirements of handlers are greater than average. Market statistics reveal that for the Central Arkansas and Fort Smith markets combined average daily Class I sales by all pool plants during September of 1978 and 1979 were greater than the aveage daily sales for each of these years. Also, the Class I utilization of producer milk in September was greater than yearly Class I use during 1978 and 1979, indicating a somewhat tighter than average supply-demand relationship. Because the month of September is one of the months in which production is short relative to Class I sales, it should be included in that time period when qualifying shipments are required since shipments from supply plants, when such plants are associated with the market, would most likely be necessary to meet fluid demands during such month. Such change would provide greater assurance of the availability of pool supply plant milk to meet the fluid milk needs of distributing plants. Furthermore, the application of performance standards during the months of September–January would provide greater uniformity with other provisions that are also based, in part, on a distinction between the relatively short and heavy production seasons. For example, the diversion provisions (discused under issue number 9) adopted herein provide more stringent limits on the quantity of milk that may be diverted to nonpool plants during the months of September through January than during other months. Also, the September through January period is regarded in the base-excess payment plan as the period when milk production is shortest relative to the Class I needs of handlers as new bases are established for each producer on deliveries made during such months.

An additional modification should be made in the performance standards to provide for a temporary upward or downward adjustment of the shipping percentages for supply plants if the Director of the Dairy Division determines that additional supplies are needed at distributing plants or that fewer shipments to such plants are needed. The adjustment should be limited to not more than 10 percentage points.

Under this provision the Director would investigate the need for revision, either on his own initiative or at the request of interested persons. If the investigation showed that a revision might be appropriate, the Director would issue a notice stating that a temporary revision of the shipping requirements is being considered and inviting views of interested persons concerning the proposed revision. After evaluating such views, the Director would then decide whether a temporary revision is warranted.

As indicated previously, there were no supply plants serving the market at the time of the hearing. Also, there is no compelling reason to increase the performance standards on a permanent basis. However, market statistics establish that this is a relatively high Class I use market with producer receipts tailored almost precisely to the needs of distributing plants. In the event that supply plants become associated with the market in the future, any short term changes in supply or demand could result in the need to adjust the performance standards on short notice. Under current provisions, changes in performance standards for supply plants can be accomplished only through a time-consuming proceeding or by suspension. Furthermore, changes accomplished through suspension are limited because of procedural requirements to relaxing rather than increasing the shipping standards. Inclusion of a provision to adjust temporarily supply plant shipping standards will enhance the ability of the order to deal in a timely manner with short-run changes in supply/demand conditions that cannot now be predicted. However, any such temporary revision of shipping standards is intended only to meet an emergency situation in meeting Class I needs of distributing plants and, therefore, should be of short duration.

Two additional modifications of the supply plant performance standards that were proposed should not be adopted. A proposal by AMPI would include as a basis for pooling a supply plant under this order, limited shipments by supply plants to other order distributing plants. The concept of the proposal was supported by Kraft. The other proposal, which was made by Kraft, would allow a supply plant operator to meet a portion of the pooling standards with direct shipments of milk from farms to distributing plants. AMPI opposed the proposal on the basis that if milk could be direct-shipped to distributing plants the supply plant with which the milk was associated served no useful purpose.

Both of the above proposals are intended to accommodate hypothetical marketing practices that may be adopted by supply plant operators to serve the fluid milk needs of distributing plants. Specifically, the proposals are intended to accommodate milk movements that may be made by minimizing the transportation costs involved. The extent to which transportation savings could be obtained would depend on the location of both the supply plant(s) and the dairy farmers associated with such plant(s) relative to the location of the

distributing plants serving this or other Federal order markets.

As indicated previously, there are currently no supply plants serving the market. Consequently, there is no information in the record of this proceeding from which to conclude that either of the proposals are necessary to reflect either supply plant shipments to other order markets or direct shipments of milk of dairy farmers associated with a supply plant to minimize transportation costs. Without the existence of practical marketing experience it is not possible at this time to determine that the proposals are necessary or that they would promote more orderly and efficient marketing of milk.

In addition to the previously indicated changes, several minor changes of a nonsubstantive nature are included in the construction and wording of the supply plant pooling provisions. In particular, the phrase "Grade A milk received from dairy farmers" is substituted for the phrase "receipts of producer milk" that is used in the current order. There is essentially no difference in the two phrases since Grade A receipts from dairy farmers become receipts of producer milk if the plant becomes a pool supply plant. Use of the substituted phrase, however, requires additional language to include as receipts milk diverted as producer milk from the plant and to exclude from receipts milk received as diverted milk. Use of such terminology was proposed by AMPI in the hearing notice.

The order language adopted herein also excludes the pooling of a supply plant which has automatic pooling status under another Federal order and also meets the performance standards for pooling under this order. The plant could be pooled under this order, however, if the plant operator elects to relinquish pool plant status under the other order. In the absence of any such action by the plant operator, a conflict would exist with regard to which of the two orders would regulate such plant. Adoption of the modification, which was proposed by AMPI, would eliminate such conflict by allowing the plant to continue as a pool plant under the order in which it has automatic pooling status.

9. Quantity Limits and Point of Pricing on Diversions of Producer Milk Under the Central Arkansas Order

(a) *Quantity limits on diversions of producer milk.* The producer milk definition should be revised to specify that at least 1 day's production of a dairy farmer be physically received each month at a pool plant in order for any milk of such person to be eligible for diversion as producer milk to nonpool plants.

Also, during each of the months of September through January, a cooperative association should be allowed to divert to nonpool plants that are not producer-handler plants a quantity of milk not in excess of one-half of the quantity of producer milk that the association causes to be delivered to and is physically received at pool plants during the month. The operator of a pool plant (other than a cooperative association) should be allowed to divert to nonpool plants that are not producer-handler plants any milk that is not under the control of a cooperative association that is likewise diverting milk to nonpool plants during the month. The quantity of milk that the operator of a proprietary plant may divert for the plant's account during the months of September through January should not exceed one-half of the milk physically received at such pool plant that is eligible to be diverted by the plant operator.

During each of the months of February through August, diversions by cooperative associations to nonpool plants that are not producer-handler plants should be limited to the quantity of producer milk that the association causes to be delivered to and is physically received at pool plants during the month. Similarly, diversions by a proprietary handler to nonpool plants that are not producer-handler plants should be limited to the quantity of milk physically received at such pool plant that is not under the control of a cooperative association that is likewise diverting milk to nonpool plants during the month.

Any milk diverted in excess of the quantity limitations specified should not be producer milk. The diverting handler may designate the dairy farmers whose milk would not be producer milk. Otherwise, the milk last diverted during such month, in lots of an entire day's production, should be excluded first in determining which milk would not be producer milk. The quantity of milk diverted for the account of a cooperative association from a pool plant of another handler that would cause the pool plant to become a nonpool plant shall not be producer milk.

Presently, the order provides that milk of a producer must be received at a pool plant before it is eligible to be diverted as producer milk. After a producer has established an association with the market, his milk may be diverted to nonpool plants on any number of days during the months of February through August and on not more than 10 days during the months of September through January.

AMPI proposed that milk of a dairy farmer should not be eligible for diversion during any month if less than 15 percent of the monthly milk production of such dairy farmer is received as producer milk at a pool plant. It also proposed that the total quantity of milk so diverted by a cooperative should not exceed on-half of the producer milk that the cooperative association causes to be delivered to and is physically received at pool plants. The cooperative proposed that the operator of a pool plant be permitted to divert any milk that is not under the control of a cooperative association that diverts milk during the month. The total quantity of milk so diverted would be limited to one-half of the producer milk physically received at such pool plant that is not under the control of a cooperative association that diverts milk during the month. Any milk diverted in excess of the prescribed limits would not be producer milk.

If over-diversions do occur and the diverting handler fails to designate the dairy farmer deliveries that are not to be producer milk, the cooperative proposed that no milk diverted by the handler during the month to a nonpool plant be producer milk. It further proposed that the quantity of milk diverted for the account of a cooperative association from a pool plant of another handler that would cause the pool plant to become a nonpool plant should not be producer milk.

Proponent cooperative's representative testified that provisions requiring some minimum association with the market are necessary to assure that milk pooled on the Central Arkansas market is actually available for fluid use. The representative indicated that there have been instances in which dairy farmers have made limited shipments during the fall months to qualify as producers. After such initial shipments, milk of such dairy farmers was taken off the market by diversion to nonpool plants. Under such circumstance, the milk was not available to the Central Arkansas market for fluid use but the dairy farmers continued to draw the blend price under the Central Arkansas order for such milk.

The representative of a proprietary pool plant regulated under the Memphis order proposed that no more than one day's production during the months of September through January be required to be physically received at pool plants regulated under the Central Arkansas order as a condition for diverting milk of

a producer. The representative proposed that during the months of September through January an amount of milk equal to the volume of milk physically received at pool distributing plants could be diverted to nonpool plants. During other months of the year, unlimited diversions would be permitted.

The handler's spokesman pointed out that milk of certain distant producers may not be needed every day of the month, especially during the season of flush production. In the event there is a need to divert reserve milk supplies to nonpool plants for manufacturing, he indicated that a handler should have the opportunity to move such milk in the most efficient manner. For this reason, he proposed that during the months of September through January only a minimal association with the market be required in order for the milk of a producer to be diverted and that the limit on the quantity of milk diverted be based upon the aggregate quantity of milk physically received at pool plants. Such diversion requirements would permit the milk of the more distant producers to be diverted every day of the year except for one day's production during each of the months of September through January.

Under the existing supply situation, the requirement that at least one day's production of a dairy farmer be delivered to the market each month as a requirement for any milk of that person to be diverted as producer milk is a reasonable standard. The Central Arkansas market is relatively short of milk production throughout the year. Most of the monthly milk production of the producers who are the regular suppliers of the market is needed each month throughout the year including the season of flush production. When the milk production of the regular suppliers of milk is not sufficient to meet the fluid needs of handlers, the milk of dairy farmers who are producers on other Federal milk orders is directed to the Central Arkansas market by the cooperative association whose members are the principal suppliers of milk for this market.

The requirement that at least one day's production of a dairy farmer be physically received each month at a pool plant will assure that each producer whose milk is being diverted maintains an association with the market.

There is no need, however, to require that at least 15 percent of a dairy farmer's production be delivered to a pool plant each month in order for any milk of such producer to be eligible for diversion. Such requirement would unnecessarily limit a handler's ability to divert efficiently the milk of producers. While limits on the quantity of milk associated with the Central Arkansas market through diversions are necessary, such limits should be established on the basis of the aggregate quantity of milk received at pool plants. Such method will provide adequate safeguards on diversions to nonpool plants and provide handlers greater flexibility in moving excess milk supplies to nonpool plants. For example, the provisions adopted herein will enable a handler to divert more often the milk of those producers whose farms are more distant from his plant than those located closest to his plant. Such diversions will benefit the more distant producers by reducing their cost of hauling milk. On days when their milk is not needed at the central market, it can be diverted to nearby manufacturing plants.

The limit on diversions adopted herein would permit up to one-third of the producer milk of a handler to be diverted off the market during the months of September through January. Such limit comports with the limit proposed by proponent cooperative for all months of the year and should accommodate any needed diversions by handlers during the months when milk production declines seasonally. In that regard, the greatest diversions during the last 3 years for the September through January period occurred in December 1978. In that month, 12.8 percent of the total producer milk on the market was not delivered to pool distributing plants.

During the months of February through August when the demand for fluid milk is less and the supply of producer milk is more plentiful than during other months of the year, handlers will find it necessary to divert greater quantities of milk to nonpool plants than during the months of September through January. Accordingly, during the months of February through August, handlers should be permitted to divert producer milk to nonpool plants in an amount equal to the quantity of producer milk physically received at the plant. As a practical matter, there is no reason to have the order provide that the operator of a pool distributing plant may divert any greater quantity than the amount adopted herein. The same would be true for a pool supply plant that is required to make qualifying shipments to pool distributing plants during such months. If such handlers diverted more milk to nonpool plants for manufacturing than was received at their plants, they would be unable to meet the 50 percent Class I utilization required of a pool distributing plant or the shipping percentage required of a pool supply plant.

As provided herein, milk diverted from a pool plant would be included in the plant's receipts for purposes of determining whether or not the plant meets the applicable pooling standard. It is necessary under this procedure to safeguard against a pool plant not meeting the pooling standards because too much milk was diverted from the plant by a cooperative, perhaps without timely knowledge of this by the plant operator. Accordingly, whatever quantity of milk diverted by a cooperative from a pool plant of another handler that would cause such plant to become a nonpool plant should not be considered as producer milk.

(b) *Point of pricing on diverted milk.* All diverted milk should be deemed for pricing purposes to have been received by the diverting handler at the location of the plant to which the milk was diverted, as proposed by AMPI. Currently, diverted milk is priced at the location of the plant from which diverted.

Pricing diverted milk at the location of the plant where such milk is physically received, rather than at the city plant from which diverted, removes the possibility of pool proceeds being used to subsidize distant producers when their milk is diverted to distant manufacturing plants. Currently some distant producers are receiving a blend price f.o.b. the city plant (as if the milk had actually moved to the city) when in fact no transportation costs to the city had been incurred because the milk was diverted to a manufacturing plant located near the producer's farm.

10. Location Adjustment Provisions of the Central Arkansas Order

The location adjustment provisions of the Central Arkansas order should be amended to provide for a no location adjustment zone consisting of a band of counties running from east to west in the central part of Arkansas. The Arkansas counties to be included in the no location adjustment zone would be Arkansas, Clark, Cleburne, Cleveland, Conway, Crawford, Crittendon, Cross, Dallas, Desha, Faulkner, Franklin, Garland, Grant, Hot Spring, Howard, Jefferson, Johnson, Lee, Lincoln, Logan, Lonoke, Monroe, Montgomery, Perry, Phillips, Pike, Polk, Pope, Prairie, Pulaski, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, White, Woodruff and Yell. Also, no location adjustments should apply for milk

received at plants located in Oklahoma or Tennessee.

For a plant located in that portion of the State of Arkansas lying to the south of the no location adjustment zone or located in the States of Louisiana, Mississippi, or Texas, the adjustment should be plus 1.5 cents or located per hundredweight for each 10 miles or fraction thereof between such plant and the nearer of the County Courthouse in Forrest City, Arkansas, or the State Capitol in Little Rock, Arkansas, if such plant is more than 60 miles from the nearer of such basing point.

At all other locations more than 60 miles from the nearer of the County Courthouse in Forrest City, Arkansas, or the State Capitol in Little Rock, Arkansas, the location adjustment for milk received at pool plants should be a minus value computed at the rate of 1.5 cents per hundredweight for each 10 miles or fraction thereof between such plant and such nearer point.

Under the current order provisions, a location adjustment applies to milk received from producers at a pool plant located more than 60 miles from the nearest of the County Courthouse in Arkadelphia, Arkansas; the County Courthouse in Forrest City, Arkansas; or the State Capitol in Little Rock, Arkansas. A minus location adjustment applies at all plants beyond 60 miles of the nearest basing point and is computed at the rate of 1.5 cents per hundredweight for each 10 miles or fraction thereof between such plant and the nearest basing point.

AMPI proposed that the existing location adjustments provided under the Central Arkansas order be continued except that no location adjustments would apply for milk received at plants located in the States of Tennessee, Mississippi or Oklahoma and plus location adjustments would apply at plants located south of Interstate 40 and more than 60 miles from the nearer of Forrest City or Little Rock, Arkansas. The cooperative proposed that Arkadelphia be dropped as a basing point in order that a location adjustment would apply at a plant located at Camden, Arkansas.

The cooperative indicated that under the location adjustments it was proposing, the current level of Class I prices would be changed at only 2 locations for plants currently regulated under the Central Arkansas order. Under its proposal, the location adjustment at Camden, Arkansas, would be changed from zero to plus 15 cents. At Texarkana, Arkansas-Texas, a plus location adjustment of 21 cents per hundredweight would apply.[3] Presently, milk received at the plant of Midwest Farms, which is located at Texarkana, Texas, receives a minus location adjustment of 12 cents.

There was some confusion interjected as a result of cross-examination of AMPI's witness on whether AMPI intended to apply no location adjustments for milk received at plants located in Oklahoma or intended to continue the minus location adjustments that currently apply in such area. In its brief, however, AMPI reiterated that no location adjustment should apply at plants located in the States of Tennessee, Mississippi or Oklahoma.

Kraft's representative indicated that Kraft was concerned with respect to AMPI's proposed location adjustments for plants located in Oklahoma that would be regulated under the Central Arkansas order. The representative acknowledged the need to establish a Class I price for a pool distributing plant located in Oklahoma that offered neither a competitive advantage or a disadvantage relative to the Class I price applicable at competing plants. Kraft was primarily concerned that the location adjustment applicable to the blend prices for pool plants located in Oklahoma be established so that the blend prices at such plants located in the vicinity of the Arkansas-Oklahoma boundary line would be aligned with the blend prices applicable to Kraft's supply plant at Bentonville, Arkansas, which is fully regulated under the Oklahoma Metropolitan order. In effect, Kraft took the position that no location adjustment to the Class I price should apply at pool distributing plants located in Oklahoma and that location adjustments should apply to the blend prices at pool plants located in Oklahoma. In its brief, Kraft noted that the Secretary should be guided by AMPI's expressions of intent on the record with regard to location adjustments, i.e., "location adjustments would continue to be minus as you went further North or Northwest" out of Central Arkansas.

The existing location adjustments applicable at all plants that are currently operating as fully or partially regulated distributing plants under the Central Arkansas order should be continued except at plants located at Camden, Arkansas, and in the Texarkana area. Currently, no location adjustments apply at the Arkansas plants located at Little Rock, Conway, Ward, and Hot Springs. As a consequence, a Class I differential of $1.94 is applicable at all such plant locations. The current Class I differential of $1.94 should be continued at such plant locations by specifying that no location adjustment shall apply at any plant located in a band of counties in Central Arkansas extending from the eastern border to the western border of Arkansas. A single Class I differential at plants located within such area will provide appropriate alignment of Class I prices at plants in such area relative to plants located immediately east and west of such area. Such pricing would be identical to the Class I differential of $1.94 that applies at plants located in the Memphis area that are regulated by the Memphis order. This differential of $1.94 at plants located in the western part of Central Arkansas would be slightly over the Class I differential under the Oklahoma Metropolitan order at plants in Oklahoma west of the Central Arkansas area.[4] The northern boundary of the no location adjustment zone should be the tier of counties including and extending east of Crawford County since a Class I differential of $1.95 applies at plants in Crawford County under the Fort Smith order. The southern boundary of the no location adjustment zone should consist of a tier of counties located immediately north of Ouachita County. Such positioning of the southern boundary of the zone will retain the current Class I differential at the Hot Springs, Arkansas, plant and permit the application of a plus adjustment at the Camden plant located in Ouachita County.

Forty Arkansas counties should be included in the no location adjustment zone. The counties are Arkansas, Clark, Cleburne, Cleveland, Conway, Crawford, Crittendon, Cross, Dallas, Desha, Faulkner, Franklin, Garland, Grant, Hot Spring, Howard, Jefferson, Johnson, Lee, Lincoln, Logan, Lonoke, Monroe, Montgomery, Perry, Phillips, Pike, Polk, Pope, Prairie, Pulaski, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, White, Woodruff and Yell.

[3] The 21 cents per hundredweight would apply to milk received at a plant located from 130.1 miles to 140.0 miles south of the State Capital in Little Rock, Arkansas. While testimony on the record shows the distance between Little Rock, Arkansas, and Texarkana, Arkansas-Texas, to be 140 miles, the location adjustment that would apply for milk received at a plant in the Texarkana area would depend upon the shortest hard surfaced highway distance between such plant and the State Capital in Little Rock, as determined by the market administrator.

[4] The Oklahoma Metropolitan order provides that the Class I differential of $1.96 for milk received from producers at a plant located 50 miles or more from the city hall in Oklahoma City shall be reduced 10 cents plus 1.5 cents for each 10 miles or fraction thereof that such plant is more than 150 miles from Oklahoma City.

The use of the no location adjustment zone instead of proponent's proposal that Interstate Highway 40 be used as the dividing line between plants at which plus and minus location adjustments would apply averts several pricing problems that might otherwise occur. Under AMPI's proposal, a Class I price alignment problem could occur at two competing plants that are separated by Interstate 40 and are located more than 60 miles from the nearer of Forrest City or Little Rock, Arkansas. For example, under AMPI's proposal a plant located at Ft. Smith, Arkansas, south of Interstate 40 would have a plus location adjustment of approximately 24 cents while a plant in the same general area but located north of such highway would have a minus location adjustment of the same magnitude. As a consequence, the Class I differential applicable at a plant located south of Interstate 40 would be $2.18 while the Class I differential applicable at the other plant would be $1.70. Furthermore, such location adjustments would not result in Class I differentials at either of such plants that would be compatible with the Class I differential of $1.95 that is applicable under the Ft. Smith order at plants located within 50 miles of Fort Smith. Also, proponent's proposed Class I differentials for plants in the Ft. Smith area would not be compatible with the Class I differential of $1.94 that proponent would apply at Oklahoma plants located immediately west of the Ft. Smith area (proponent proposed that no location adjustment apply at any plant located in Oklahoma).

The Class I price at plants in Arkansas south of the no location adjustment zone previously described and at plants in the State of Texas should be subject to plus location adjustments.

In general, plus location adjustments are needed at plants located south of the central portion of the Central Arkansas marketing area to increase the Class I differential applicable at such plants to the level of the Class I differentials applicable at other plants in the same general area that are regulated under adjacent Federal milk orders. In the absence of such alignment, the local milk supply would be encouraged to move to plants with higher Class I differentials. To provide the necessary Class I price alignment, the Central Arkansas order should provide for plus location adjustments for milk received at plants located in a southerly direction from the central market.

Presently, no location adjustment applies at the plant at Camden, Arkansas, and a minus location adjustment of $0.12 applies at a plant at Texarkana, Texas. As a consequence of the current location adjustment provisions, the Class I prices applicable at such plants are not appropriately aligned with plants located in that general area which are regulated by other Federal orders. For example, a Class I differential of $2.23 applies at the plant located at Texarkana to the extent that it is a partially regulated distributing plant under the Texas order and a Class I differential of $1.82 applies to the extent that the plant is partially regulated distributing plant under the current Central Arkansas order. Under the Greater Louisiana order, a Class I differential of $2.47 applies at a plant located at Shreveport which is approximately 70 miles directly south of Texarkana.

The plus location adjustment proposed for the Texarkana area will provide the necessary price alignment in the area south of the no location zone with the Class I prices applicable in such general area under other orders. The plus location adjustment adopted herein would provide a plus adjustment of $0.21 at Texarkana resulting in a Class I differential of $2.15 at such location. Such Class I differential compares favorably with the Class I differential of $2.23 provided under the Texas order for a plant at Texarkana. Furthermore, the plus location adjustment will provide a better alignment of the Central Arkansas Class I price at a Texarkana plant with the Greater Louisiana order Class I price at Shreveport located seventy miles south of Texarkana.

The location adjustment provisions adopted herein would provide for a plus adjustment of $0.15 at Camden resulting in a Class I differential of $2.09 at such location. A Class I differential of $2.09 is needed to assure the availability of a sufficient milk supply at the Camden plant. In the absence of the 15-cent increase in the Class I differential for milk received at that plant, the local milk supply could be marketed at plants under adjacent Federal milk orders and receive a higher return. Furthermore, a Class I differential higher than the central market location is needed to encourage producers in the Little Rock area to make their milk available to the Camden plant when it is needed to supplement the local milk supply. In this regard, the cooperative supplying the Camden plant indicated that it currently charges the Camden plant a higher Class I price than handlers in Little Rock to obtain a producer milk supply for the Camden plant.

The Class I price at plants in the States of Mississippi and Louisiana should also be subject to plus location adjustments. While Class I prices under current provisions of the Central Arkansas order are reduced at plants located outside the marketing area, Class I prices under the Memphis order increase as one moves south from Memphis into the State of Mississippi. The Memphis order provides that at all locations in Mississippi more than 50 miles from Memphis the Class I price shall be increased by a factor related to the cost of transporting milk. The adoption of similar pricing provisions in the Central Arkansas order will provide approximately the same location value for milk at plants in Mississippi that currently applies under the Memphis order. However, instead of applying plus location adjustments at all plants in Mississippi more than 50 miles for Memphis, as provided under the Memphis order, adjustments under the Central Arkansas order should apply at all plants located more than 60 miles from the nearer of Forrest City or Little Rock, Arkansas. This should provide approximately the same location adjustment pricing at Mississippi plants that currently applies under the Memphis order in view of the proximity of Forrest City to Memphis and the 10 mile increase in distance before the adjustment applies. Also, it is reasonable that a similar pricing structure apply to plants located in the State of Louisiana since plants in such southern area would also be expected to have to pay increasingly higher prices to dairy farmers for milk supplies.

No location adjustment should apply at plants located in Oklahoma. Any plant located in Oklahoma that may become associated with this market most likely would compete for milk supplies with handlers regulated under the Oklahoma Metropolitan order. Since the pricing provisions of that order establish a Class I differential of $1.98 in the Oklahoma City area and $1.88 in the Tulsa area, a Class I differential of $1.94 should assure an adequate milk supply for a plant in Oklahoma that might become regulated under the Central Arkansas order.

Kraft's spokesman expressed concern that the zero location adjustment AMPI proposed to apply to the uniform price for milk that is pooled under the Central Arkansas order and delivered to a plant location in Oklahoma would provide no incentive for producers in eastern Oklahoma and northwestern Arkansas to deliver milk to the central marketplace of the Central Arkansas order. As previously noted, the

economic value of milk delivered to distributing plants located in Oklahoma (Class I differentials of $1.88 and $1.98 at Tulsa and Oklahoma City, respectively) approximates the economic value of milk delivered to the central marketplace of the Central Arkansas order (Class I differential of $1.94). For this reason, a producer under the Central Arkansas order who delivers his milk to a pool plant located in Oklahoma should receive a price that approximates the price he would receive for delivering the milk to a pool plant in Little Rock, Arkansas, the central marketplace of the Central Arkansas order.

Likewise, no location adjustments should apply at plants located in Tennessee. Any plant located in western Tennessee that may become associated with this market would most likely compete for milk supplies with handlers regulated under the Memphis, Tennessee, order. Since the Memphis order provides for a Class I differential of $1.94 in the Memphis area, a Class I differential of $1.94 should assure an adequate milk supply for a plant in western Tennessee that might become regulated under the Central Arkansas order.

At plants located outside the areas previously described, a minus location adjustment should apply. Under the location adjustment provisions adopted herein, the pool plant at Paragould, Arkansas, would continue to have a minus adjustment of $0.135. Other plants at which minus location adjustments would also apply would be located to the north of the marketing area. Minus location adjustments in this general area north of the marketing area are needed to reflect the lesser location value of milk for this market at the more distant northern plants relative to plants nearer the marketing area.

The location adjustment on Class I milk received at plants located outside the areas in which no location adjustment applies should be at the rate (either minus or plus) of 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the nearer of the County Courthouse in Forrest City, Arkansas, or the State Capitol in Little Rock. This location adjustment rate will result in Class I prices at plants located both north and south of the marketing area that are reasonably aligned with Class I prices in other markets.

The provisions of the Central Arkansas order that limit Class I location adjustment credit on bulk milk transferred between plants should be retained. If location adjustment credits were not limited, the pool obligation of the supply plant operator for producer milk transferred to a distributing pool plant as Class I milk would be the Class I price adjusted for the location of the supply plant. Under the order, however, if the distributing plant receiving supply plant milk has sufficient milk from local direct-ship producers to cover all of its Class I sales, the supply plant operator does not receive location adjustment credit on the milk transferred since it is not needed for Class I use.

The basic concept of this limitation on location adjustment credits should be retained. To adapt this concept to the pricing structure adopted herein (which includes the announced Class I price for central market locations with plus or minus price adjustments at other locations), it is necessary that the location adjustment credit provisions be revised. The intent of the limitation provided is to insure that producers on the market do not have their returns lowered through the granting of price credits on milk unnecessarily moved between pool plants for other than Class I use.

In this connection, location adjustment credits should not apply to Class I milk shipped to pool plants in lower-priced zones. Although such shipment would not be a usual movement of milk, it could occur. For example, a plant in Texarkana with receipts in excess of its fluid milk requirements might ship such excess to handlers in Little Rock, Arkansas. The Class I price levels established under the order in Texarkana and other plus location adjustment zones are intended to attract milk to these areas for Class I use at such plant locations and not for reshipment to lower-priced zones. Such reshipments should not be encourage through the granting of price credits on such milk movements. If the prices provide tend to attract greater quantities of milk than are needed locally, then consideration should be given to whether a lower price should be provided.

An additional modification in the application of Class I location adjustment credits that was proposed should also be adopted to conform with the adoption of plus and minus adjustments to the Class I price under the order. Under the present order provisions, a disallowed location adjustment credit results in the application of the central market f.o.b. Class I price (Class I differental of $1.94) to the transferor-plant. Such price could be either higher or lower than the applicable Class I differential at the transferee-plant. This should be changed so that the transferor plant would have to account for such milk at the Class I price applicable at the transferee-plant. For example, if milk were transferred from a plant with a minus adjustment to a plant with a plus 15-cent adjustment, and there was no location adjustment credit allowed for the transferor-handler, then the tranferor-handler would have to account to the pool for such transferred Class I milk at the Class I price at the transferee-plant, i.e, a Class I differential of $2.09. Since the location value of milk in this example is the Class I differential price of $2.09, the order should not apply the lower central market price of $1.94 on any of the transferred milk. Likewise, milk transferred to a plant with a minus 13.5-cent location adjustment from a plant with a greater minus adjustment should reflect the $1.805 location value rather than the higher $1.94 location value applicable in the central market.

Adoption of the above procedure will result in pricing transferred milk that does not receive a location adjustment credit at its proper value at the location of the transferee-plant. In order to fully accomplish this objective, the computation of any location adjustment credits that may be assigned should be based on the difference between the order Class I prices applicable at the transferor and transferee plants rather than at the difference between the Class I price at the transferor plant and the central market Class I price as under current provisions.

Distributing plants relying on supply plant milk for Class I use should be encouraged to draw such milk from the nearest plant or plants. It is possible that pool plant operators may attempt to circumvent such application of the order provisions by claiming that near-in supply plant milk was used in Class III while an equivalent amount of more distant supply plant milk received at the city was used in Class I. Although the more distant plant would be eligible for a location adjustment credit, under the provisions adopted herein such credit would be limited, in this example, to the lesser credit that would have been applicable to the near-in supply plant milk had it been classified as Class I milk.

At the hearing, Kraft suggested two modifications to the location adjustment provisions concerning the assignment of location adjustment credits to milk transferred to distributing plants from supply plants. One modification would increase Class I use at a distributing plant by 10 percent prior to assigning location adjsutment credits to milk received from supply plants. The other modification would provide for a pro

rata assignment of location adjustment credits to transfers from two or more supply plants to a distributing plant without regard to the location of the supply plants. Kraft stated that the modifications are necessary to help defray the cost of transporting milk from supply plants to distributing plants.

The fact that testimony on the record indicates that location adjustments do not fully cover the cost of hauling milk does not provide a sufficient basis for adopting Kraft's modifications. Both modifications are concerned with the manner in which available location adjustments are assigned to receipts from various sources rather than the rate of location adjustments that are provided under the order. With respect to the manner in which such adjustments are assigned, both modifications are in conflict with the principle of limiting the assignment of location adjustment credits to discourage the shipment of milk between pool plants for other than Class I use. This record does not provide an adequate basis for relaxing this limitation. Accordingly, the modifications are not adopted.

* * * * *

12. Miscellaneous Changes in the Three Orders

This section deals with several conforming changes in the orders as well as miscellaneous modifications in the existing provisions of the orders not discussed elsewhere in this decision Paragraphs (a)(i), (ii), and (iii) deal with modifications of the Central Arkansas order that were proposed and supported by AMPI. Paragraphs (a)(v) and (vii), (b)(i), (c), (d), and (e) deal with conforming changes or clarification of existing order provisions by the Department. The remaining paragraphs deal with miscellaneous modifications in provisions of the orders and the proponents of such changes are noted therein.

(a) *Miscellaneous Changes in the Central Arkansas Order.* (i) *Route disposition.* A definition of route disposition under the Central Arkansas order is adopted herein. The definition represents no substantive change from the current order provisions but merely sets forth the definition as a separate section of the order.

(ii) *Distributing plant and supply plant definitions.* Definitions of each of these plants are currently included in the Centeral Arkansas order in conjunction with the pooling standards for each type of plant. The definitions contained herein modify the current definitions by describing each of these plants in a separate section of the order apart from the pooling standards.

(iii) *Approved plant.* The "approved plant" definition should be deleted from the provisions of the Central Arkansas order. This section is not longer needed since the provisions contained therein have been incorporated in a newly added route disposition definition and the revised definitions of a distributing plant and a supply plant which are adopted herein.

(iv) *Pool plant.* A proposal by Kraft that the Central Arkansas order not include a non-Grade A facility which is physically separated from the Grade A portion of a pool supply plant as part of the pool plant should not be adopted.

A spokesman for the company indicated that Kraft now operates a plant with Grade A and non-Grade A facilities at Bentonville, Arkansas, and the Grade A portion of the plant is pooled as a supply plant under the Oklahoma Metropolitan order. Kraft also operates a similar facility at Springfield, Missouri, and the Grade A portion of the plant is pooled under the St. Louis-Ozarks order. The spokesman for Kraft indicated that the change was proposed to assure that Kraft's Bentonville plant, or a similar operation, would be treated by the market administrator as two separate facilities if such plant supplied milk to distributing plants in the Central Arkansas market.

The treatment accorded Kraft's plants under the Oklahoma Metropolitan and St. Louis-Ozarks orders is the result of administrative determinations since neither of the orders have specific provisions requiring such treatment. There is little reason to presume that a different administrative determination would apply in the Central Arkansas market. Under the circumstances, there appears to be no reason for adopting the proposed modification of the Central Arkansas order.

The pool plant provisions of the Central Arkansas order should not include shipments of packaged fluid milk products from a pool distributing plant to another pool plant in meeting the route disposition requirements for a pool plant. In drafting the pool plant definition of the Central Arkansas order to incorporate the revised distributing plant definition, AMPI proposed that such shipments of packaged fluid milk products be counted as qualifying route disposition of the shipping plant. The spokesman for the cooperative indicated, however, that the association in drafting the proposal intended to make no change in the qualification requirements for a distributing plant. Accordingly, the current qualification standards for pool distributing plants with regard to route disposition should be retained.

(v) *Handler.* The reference to "approved" plants that appears in the handler definition in § 1108.9(a) should be changed to refer to distributing plants and supply plants since definitions of such plants replace the current "approved plant" definition. Also, the reference "§ 1108.12" that appears in § 1108.9(b) should be changed to "§ 1108.13". This change is necessary since the order language adopted herein sets forth the diversion provisions in the producer milk section of the order instead of the producer section.

(vi) *Producer milk.* The producer milk definition of the Central Arkansas order should be revised to provide that milk picked up by a handler at the farm in a bulk tank truck but not received at a plant until the next month would be producer milk in the month in which the milk is picked up.

The modification of the producer milk definition adopted herein carries out the basic objectives proposed by the principal cooperative association supplying the Central Arkansas market. There was no opposition to the proposed change.

Under the present accounting procedures, bulk tank milk that is picked up at the farm but not physically received at a plant until the following month is treated as a receipt of producer milk in such following month. This procedure presents accounting problems, particularly when milk passes through a reload facility and a portion of the load on the pick-up tanker is transferred to an over-the-road tanker and received at a plant that month, while the remainder is held at the reload facility for delivery to a plant the next month. While administrative guidelines have been adopted to promote uniform accounting procedures for bulk milk throughout the Federal order system, the procedures have not fully resolved the accounting problems to the satisfaction of affected parties. Further, individual producers have not understood the deferred settlement for milk that results when milk picked up in the current month is not physically received at a plant during that month.

Dairy farmers need not be required to wait one and a half months before receiving the uniform price for milk that is picked up at their farms on the last day of the month but is not received at a plant until the following month. The accounting procedure will be simplified and should be more readily accepted if milk is pooled in all cases in the month in which it is picked up at the farm. The

changes provided herein will permit pooling of producer milk in the month it is picked up at the farm irrespective of whether the milk is received at a plant in the current or the following month. Milk picked up by a handler in the current month but not received at a plant will be included in the handler's end-of-the-month inventory and will be priced at the location of the plant where the milk is physically received in the following month. Since this milk presumably will be received at a plant on the 1st or 2nd day of the following month, the handler will know the location of the plant of actual receipt in time to include this information in his monthly report. If, however, none of the milk in the pick-up tanker is received at a plant, such milk will not be included in the handler's report and he will have no pool obligation on it. This conforms with the present provisions which tie the producer milk provisions to its receipt at a plant.

If the operator of a pool plant is the first accountable handler for the milk, the plant operator will account for this producer milk as part of the plant's end-of-the-month inventory and will be charged the Class III price in the month it is picked up at the farm. In the following month, this milk will be treated in the same manner as other fluid milk products the plant operator had in inventory.

If a cooperative association bulk tank handler is the first accountable handler, such cooperative will account for the milk in transit as inventory and at the Class III price and will be credited at the blend price. Additional conforming changes are needed to implement this procedure to insure that in the following month the cooperative is credited for its pool obligation in the preceding month on such milk. In the following month, this milk is included in the obligation of the pool plant operator who physically received it and the plant operator will account to the market administrator for this milk at the classified prices. Such monies would be deposited in the producer-settlement fund, but since the milk was pooled in the preceding month that quantity of milk would not be included in the pool computation of the current month.

It should be noted here that bulk tank milk being diverted by a cooperative from another handler's pool plant to a nonpool plant should not be included in the cooperative's ending inventory if the milk is in transit at the end of the month. Instead, the final accounting for the milk should be in the month in which it is picked up at the farm. The inventory accounting procedure is not necesary in this case since the cooperative is the only accountable handler under the order for such milk. The milk is received by the cooperative, of course, at the time it is picked up at the farm.

(vii) *Payments From the Producer-Settlement Fund.* The producer-settlement fund of the Central Arkansas order provides that if the balance in the producer-settlement is not sufficient to make all payments required to be made from such fund, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available. Conforming changes should be made in that section to provide that if a handler who is required to channel payments for producers through the market administrator fails to transmit the total amount due, the market administrator shall reduce uniformly the payments due to producers of such handler and complete such payments when the remaining amount is received.

(b) *Miscellaneous Changes In the Memphis Order.* (i) *Announcement of uniform price.* Announcement of the uniform price under the Memphis order should be changed from the 13th to the 11th day of the month. Such change will make the announcement of the uniform price conform to the date the uniform price is announced under the Central Arkansas order. The principal cooperative supplying milk to the Memphis, Fort Smith and Central Arkansas orders proposed that the announcement of the uniform price in each of the three orders be announced on the 13th of the month. The cooperative's proposal, however, was predicated on the market administrator collecting all payments from handlers and then paying producers and cooperative associations by means of two partial payments and one final payment. Also, the cooperative proposed a revised payment schedule and requested that all payments be made so that they would be received by the due date.

Under the proposed payment procedure adopted herein, the uniform price should be announced as soon as possible. The earlier announcement date in conjunction with requiring handlers to pay the classified use value to the market administrator by the 14th instead of the 12th of the month will provide handlers 3 days in which to make their final payment for producer milk. In that regard, as discussed previously, payment to the market administrator would need to be received by the market administrator on or before the due date. A further reason for advancing the announcement date of the uniform price is related to the adoption of late payment charges under the three orders. In such circumstance, it is necessary that sufficient time be provided between the announcement and payment dates so that handlers can make such payment without incurring a late payment charge.

(c) *Miscellaneous Changes In The Fort Smith and Central Arkansas Orders.* Several conforming changes should be made in the "other reports" sections of the Fort Smith and Central Arkansas orders in recognition that the market administrator would be making payments to producers and cooperative associations in the event of late payment by handlers. In such event, the market administrator would need to know the name and address of each producer from whom milk was received during the first 15 days of the month, the total pounds of milk received during such period from each producer, and the amount and nature of any deduction authorized by the producer.

Conforming changes are also made in the "payroll reports" section of each of the orders because handlers who make payments to the market administrator, rather than to producers and cooperative associations, would not have a producer payroll. Also, the payroll report section is modified to delete the requirment to report the butterfat test since this information is submitted in other reports. Finally, the producer payroll report is modified to require the reporting of the dates on which payments were made to producers.

(d) *Miscellaneous Changes In The Memphis and Central Arkansas Orders.* The reporting sections of the Memphis and Central Arkansas orders should be modified to require an exchange of information between a cooperative and a handler relative to bulk milk received from a plant operated by a cooperative association. this information is necessary since the orders are being revised to specify that handlers must make payment to a cooperative association under the Central Arkansas order and to the market administrator under the Memphis order for bulk milk received from a plant operated by the cooperative association.

The Memphis and Central Arkansas orders should provide that amounts due the market administrator from a cooperative association shall be offset by amounts due the cooperative from the market administrator. Requiring a cooperative to make payment to the market administrator who would then return such payment to the cooperative would be an economic hardship on the

cooperative and would serve no useful purpose.

(e) *Miscellaneous Changes In The Memphis, Fort Smith and Central Arkansas Orders.* The Memphis, Fort Smith and Central Arkansas orders should be revised to make it clear that assignments may be deducted from both the partial and final payments to producers. A proposal by the cooperative association that deductions from the partial and final payments may not exceed the amount due producers should also be adopted. Such limitation is necessary in order to assure that an overpayment to a producer does not result. Also, the orders should provide that assignments must have been paid assignees by the date payment is due producers. In the absence of such limitation, handlers could withhold payments due producers on the pretext that such funds are being held to pay future assignments.

(f) *Miscellaneous Changes In The Fort Smith Order.* Announcement of the uniform price under the Fort Smith order should be changed from the 12th to the 11th of the month. As previously noted, the order is being revised to require a handler who is more than 3 days late in payment of an order obligation to make final payment of money due producers to the market administrator. Such payments must be made on or before the day prior to the date on which the handler would otherwise be required to make final payment to a cooperative association on behalf of producers or to individual producers. Currently, a handler is required to make final payment to a cooperative association on or before the 13th day of the month. Thus, a handler who is required to transmit payments due producers through the market administrator would need to make such payment on or before the 12th day of the month. For this reason, announcement of the uniform prices on the 12th would not be timely. Accordingly, the date for announcing the uniform price should be advanced 1 day. Such change in conjunction with the change in the uniform price announcement date for Memphis will result in the uniform prices in each of the 3 orders being announced on the 11th.

In addition, the order should be revised to make it clear that if the market administrator does not receive full payment from a handler for producer milk, the market administrator shall reduce uniformly the payments to all producers of such handler and complete such payments when the remaining amount is received. This is necessary since the market administrator would collect payment from handlers and pay producers in the event of late payment by a handler.

Rulings on Proposed Findings and Conclusions

A brief filed on behalf of one interested party contended that certain of the payment provisions provided herein cannot be adopted since the provisions would increase the returns to producers and no economic data upon which the Secretary may make the analysis and findings required by section 608c(18) of the Act in support of such increase were placed in evidence by the proponent cooperative association. It is noted in this regard that the payment provisions of the orders provided herein would not increase compensation to producers. Thus, the issue raised in the handler's brief is moot.

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

General Findings

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

The following findings are made with respect to each of the aforesaid orders:

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

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

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

(d) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, six cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in §§ 1097.85, 1102.85, and 1108.85 of the aforesaid tentative marketing agreements and the orders as proposed to be amended.

Recommended Marketing Agreements and Order Amending the Orders

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the Memphis, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carred out:

PART 1097—MILK IN MEMPHIS, TENNESSEE, MARKETING AREA

1. In § 1097.32, a new paragraph (d) is added to read as follows:

§ 1097.32 Other reports.

* * * * *

(d) On or before the second day prior to the reporting dates specified in § 1097.31, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred to pool plants of other handlers within the time periods described in § 1097.31 shall report to each such pool plant operator and to the market administrator the name and location of the transferor plant and the total pounds and butterfat content of the bulk fluid milk products transferred from the plant.

2. In § 1097.62, paragraph (b) is revised to read as follows:

§ 1097.62 Announcement of uniform prices for each handler and butterfat differential.

* * * * *

(b) The 11th day after the end of each month the applicable uniform prices for each handler pursuant to § 1097.61 for such month.

3. Section 1097.71 is revised to read as follows:

§ 1097.71 Payments to market administrator.

(a) Subject to paragraphs (d) and (e) of this section, each handler shall pay to the market administrator on or before the 2nd day prior to the last day of each month an amount determined by multiplying the handler's receipts during the first 15 days of such month of producer milk (excluding the milk of any producer who had discontinued shipping milk to such handler before the 25th of the month and, in the case of a handler described in § 1097.9(c), producer milk delivered to fluid milk plant) and milk from a handler described in § 1097.9(c) by the applicable partial payment rate less proper deductions authorized in writing by producers from whom the handler received milk, provided that the amount deducted for each producer does not exceed the value of the milk received from the producers during the partial payment period and the handler has paid such deductions to assignees by the date payment is otherwise due the producer.

(b) Subject to paragraphs (d) and (e) of this section, each handler shall pay to the market administrator on or before the 14th day after the end of each month an amount equal to such handler's value of milk for such month determined pursuant to § 1097.60(a), as adjusted by the butterfat differential specified in § 1097.74 and pursuant to § 1097.60 (b), (c) and (d), less:

(1) Payments made by the handler pursuant to paragraph (a) of this section for such month; and

(2) Proper deductions that were authorized in writing by producers from whom the handler received milk, provided that the amount deducted for each producer does not exceed the value of the milk received during the final payment period and provided that the handler has paid such deductions to assignees by the date payment is otherwise due the producer;

(c) Each handler who received bulk fluid milk and bulk fluid cream products from a fluid milk plant operated by a cooperative association shall pay the following amounts for such products to the market administrator, who in turn shall transmit such money to the cooperative association.

(1) On or before the 2nd day prior to the last day of each month, an amount determined by multiplying such receipts during the first 15 days of the month by the applicable partial payment rate. If the handler so elects, such prices may be adjusted by the butterfat differential specified in § 1097.74 for the preceding month.

(2) On or before the 14th day after the end of each month, an amount determined by multiplying the quantity of such receipts during the month that was classified in each class pursuant to § 1097.42(a) by the applicable class price, as adjusted by the butterfat differential specified in § 1097.74, plus the applicable administrative assessment, less any payments made by the handler pursuant to paragraph (c)(1) of this section. For the purposes of such computation, the applicable Class I price shall be the Class I price applicable at the transferee plant plus the applicable administative assessment rate.

(d) The following conditions shall apply with respect to the payments prescribed in paragraphs (a), (b) and (c) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator; and

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

(e) Payments due the market administrator from a cooperative association handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1097.73(c).

4. A new § 1097.72 is added to read as follows:

§ 1097.72 Rate of partial payments.

Partial payment rates shall be computed as follows:

(a) During the months of March through July, the previous month's Class III price.

(b) For the months of August through February, the previous month's Class III price plus $1.00, and further adjusted by the zone or location adjustment applicable at the receiving plant.

5. Section 1097.73 is revised to read as follows:

§ 1097.73 Payments to producers and to cooperate associations.

(a) Subject to paragraphs (c) through (e) of this section, the market administrator shall pay each producer on or before the last day of each month for milk which was received during the first 15 days of each month; provided, payment pursuant to § 1097.71(a) has been received by the market administrator. Such payment shall be uniform to all suppliers of each plant at a rate per hundredweight equal to that received by the market administrator less the deductions authorized by each producer pursuant to § 1097.71(a).

(b) Subject to paragraphs (c) through (e) of this section, the market administrator shall pay each producer on or before the 16th day after the end of each month for milk for which payment pursuant to § 1097.71(b) has been received by the market administrator. Such payment shall be at the uniform price(s) computed pursuant to § 1097.61 for the month, subject to the following adjustments:

(1) Any applicable adjustments pursuant to §§ 1097.74 and 1097.75;

(2) Less the payment described in paragraph (a) of this section;

(3) Less deductions for marketing services pursuant to § 1097.86;

(4) Less the authorized deductions specified in § 1097.71 (a) and (b)(2); and

(5) Any adjustments for errors in calculating payments to an individual producer for past months.

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator, on or before the day prior to the dates specified in such paragraphs, shall pay to each cooperative association that so requests with respect to those producers for whom it markets milk and who are certified to the market administrator by the cooperative association as having authorized the cooperative association to receive such payment an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraphs (a) and (b) of this section.

(d) The following conditions shall apply with respect to the payments prescribed in paragraphs (a) through (c) of this section:

(1) If the date by which such payments are to be made falls on a Saturday, or Sunday or on any day that is a national holiday, such payments need not be made until the next day on which the market administrator's office is open for public business; and

(2) If the application of § 1097.71(c)(2) or paragraph (e)(1) of this section results in a delay in the partial or final

payments by handlers to the market administrator, the corresponding partial or final payments prescribed in paragraphs (a) through (c) of this section may be delayed by the same number of days.

(e) If the market administrator does not receive the full payment required of a handler pursuant to § 1097.71 he shall reduce uniformly per hundredweight the payments due producers and cooperative associations for their milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete such payments on or before the next date for making payment pursuant to this section following the date on which the remaining payment is received from such handler.

6. A new § 1097.78 is added to read as follows:

§ 1097.78 Charges on overdue accounts.

(a) Any unpaid obligation of a handler pursuant to §§ 1097.71, 1097.73, 1097.77, and 1097.85 shall be increased one percent beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions:

(1) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid overdue charges previously computed pursuant to this section; and

(2) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(b) All charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

7. Section 1097.85 is revised to read as follows:

§ 1097.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month six cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts of milk at fluid milk plants from producers (including receipts from a handler described in § 1097.9(c) and such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1097.44(a)(7) and (11) and the corresponding steps of § 1097.44(b);

(c) Receipts of milk by a handler described in § 1097.9(c) in excess of that specified in paragraph (a) of this section; and

(d) Receipts of milk by a handler described in § 1097.9(b).

PART 1102—MILK IN FORT SMITH, ARKANSAS MARKETING AREA

1. Section 1102.31 is revised to read as follows:

§ 1102.31 Payroll reports.

On or before the 20th day after the end of each month, each handler who pays producers pursuant to § 1102.73 shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(a) His name and address and the pounds of milk received;

(b) The prices per hundredweight, the gross amounts due, the amount and nature of any deductions, and the net amounts paid; and

(c) The dates such payments were made.

2. Section 1102.32 is revised to read as follows:

§ 1102.32 Other reports.

(a) On or before the 20th day of each month, each handler described in § 1102.9(a) who is required pursuant to § 1102.73(a) to make payments to the market administrator for milk received from producers and cooperative associations shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month:

(1) The name and address of each producer from whom milk was received who has not discontinued shipping milk to the handler;

(2) The total pounds of producer milk received from such producer;

(3) Except in the case of producer milk for which a cooperative association is collecting payments, the amount and nature of any deductions, as authorized in writing by the producer, to be made from the partial payment for such milk; and

(4) In lieu of reporting in accordance with paragraphs (a)(1), (2) and (3) of this section, a handler may, if he so chooses, report the sum of the pounds of milk received from individual producers whose milk is marketed by a cooperative association that is authorized to receive payment for such milk. The handler shall also report the sum of the authorized deductions of such producer.

(b) On or before the 7th day after the end of each month, each handler described in § 1102.9 (a) and (b) shall report to the market administrator the following information with respect to its receipts of milk during such month:

(1) The name and address of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer, its average butterfat content and for the months of March through July the pounds of base milk; and

(3) Except in the case of producer milk for which a cooperative association is collecting payments, the amount and nature of any deductions as authorized in writing by the producer, to be made from the final payment for such milk.

(c) In addition to the reports required pursuant to paragraphs (a) and (b) of this section and §§ 1102.30 and 1102.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

3. In § 1102.62, paragraph (b) is revised to read as follows:

§ 1102.62 Announcement of uniform price for each handler and butterfat differential.

* * * * *

(b) The 11th day after the end of each month the applicable uniform prices for each handler pursuant to § 1102.61 for such month.

4. A new § 1102.72 is added to read as follows:

§ 1102.72 Rate of partial payments.

Partial payment rates shall be computed as follows:

(a) During the months of March through July, the previous month's Class III price.

(b) For the months of August through February, the previous month's Class III price plus $1.00, and further adjusted by the zone or location adjustment applicable at the receiving plant.

5. Section 1102.73 is revised to read as follows:

§ 1102.73 Payments to producers and to cooperative associations.

(a) any handler who the market administrator determines was more than 3 days late in making any payment obligation under Part 1102 shall pay to the market administrator the amount the

handler would have otherwise been required to pay to producers and cooperative associations pursuant to paragraphs (b) and (c) or paragraph (d) of this section. Payment shall be made to the market administrator on or before the day prior to the dates specified in paragraphs (b) and (c) or paragraph (d) of this section and such payments shall continue until the handler has met all payment obligations for 3 consecutive months. Payment to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator. If the date by which payments must be made to the market adminstrator falls on a Saturday or Sunday or any day that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

(b) Except as provided in paragraphs (a) and (d) of this section, each handler shall pay on or before the last day of each month for milk received from producers during the first 15 days of the month to each producer who did not discontinue shipping milk to such handler before the 25th of the month, an amount equal to not less than the partial payment rate pursuant to § 1102.72 multiplied by the hundredweight of milk received from such producer, less proper deductions authorized in writing by the producer. Such deductions shall not exceed the value of the milk received during the partial payment period and the handlers must have paid such deductions to assignees by the date payment is otherwise due the producer.

(c) Except as provided in paragraphs (a) and (d) of this section, each handler shall make payment on or before the 15th day after the end of the month to each producer for all milk received from such producer during the preceding month at the uniform prices(s) computed pursuant to § 1102.61 for the month subject to the following adjustments:

(1) Any applicable adjustments pursuant to §§ 1102.74 and 1102.75;

(2) Less the payment described in paragraph (b) of this section;

(3) Less deductions for marketing services pursuant to § 1102.86;

(4) Less proper deductions authorized in writing by such producer provided that the deductions for the month do not exeed the value of the milk received during the month and the handler has paid such deductions to assignees by the date payment is otherwise due the producer;

(d) In lieu of payments to producers pursuant to paragraphs (b) and (c) of this section, each handler, on or before the 2nd day prior to the dates specified in such paragraphs, shall pay to each cooperative association that so requests with respect to those producers for whom it markets milk and who are certified to the market administrator by the cooperative association as having authorized the cooperative asociation to receive such payment an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraphs (b) and (c) of this section.

(e) If the market administrator does not receive the full payment required of a handler pursuant to paragraph (a) of this section, he shall reduce uniformly per hundredweight the payments due producers and cooperative associations for their milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler.

6. A new § 1102.78 is added to read as follows:

§ 1102.78 Charges on overdue accounts.

(a) Any unpaid obligation of a handler pursuant to §§ 1102.73, 1102.77, 1102.85 or 1102.86 shall be increased one percent beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions:

(1) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid overdue charges previously computed pursuant to this section; and

(2) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(b) All charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

7. Section 1102.85 is revised to read as follows:

§ 1102.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month six cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production); and

(b) Other source milk allocated to Class I pursuant to § 1102.44 (a) (7) and (11), and the corresponding steps of § 1102.44 (b).

8. Section 1102.86 is revised to read as follows:

§ 1102.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers, pursuant to § 1102.73, shall deduct seven cents per hundredweight or such amount not exceeding seven cents per hundredweight as may be prescribed by the Secretary. Each handler making such deductions, shall pay the deductions to the market administrator on or before the 15th day after the end of the month. Such moneys shall be used by the market administrator to sample, test and check the weights of milk received and to provide producers with market information.

(b) In the case of producers for whom a cooperative association, as determined by the Secretary, is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 15th day after the end of each month, pay such deductions to the cooperative association rendering such services accompanied by a statement showing the amount of milk for which such deduction was computed for each producer.

PART 1108—MILK IN CENTRAL ARKANSAS MARKETING AREA

1. A new § 1108.3 is added to read as follows:

§ 1108.3 Route disposition.

"Route Disposition" means any delivery of a fluid milk product classified as Class I milk to a wholesale or retail outlet (including any delivery through a vendor or a plant store) except a delivery to another pool plant.

2. Section 1108.5 is revised to read as follows:

§ 1108.5 Distributing plant.

"Distributing plant" means a plant which is approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which during the month there is route disposition in the marketing area.

3. Section 1108.6 is revised to read as follows:

§ 1108.6 Supply plant.

"Supply plant" means a plant which is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are shipped during the month to a pool plant.

4. Section 1108.7 is revised to read as follows:

§ 1108.7 Pool plant.

Except as provided in paragraph (c) of this section "pool plant" means:

(a) A distributing plant from which during the month packaged fluid milk products, except filled milk, disposed of as route disposition are equal to not less than 50 percent of its receipts of fluid milk products from producers (including producer milk diverted from the plant), handlers described in § 1108.9(c), and other pool plants and from which not less than 10 percent of such receipts is disposed of in the marketing area in the form of packaged fluid milk products, except filled milk, as route disposition.

(b) A supply plant from which during the month fluid milk products, except filled milk, equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers (including producer milk diverted from such plant but excluding milk received as diverted milk) and handlers described in § 1108.9(c) is shipped to and received at distributing plants qualified pursuant to paragraph (a) of this section, subject to the following conditions:

(1) A supply plant which is a pool plant under this paragraph for each of the months during the period September through January shall upon written application to the market administrator, on or before the end of such period, be designated as a pool plant for the following months of February through August;

(2) The shipping percentage specified in this paragraph may be increased or decreased temporarily by 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. For any of the months of February through August, a minimum shipping percentage of up to 10 percent may be established by the Director for all pool supply plants that are qualified as a pool plant pursuant to paragraph (b)(1) of this section. Before making such a finding(s) the Director shall investigate the need for revision, either at the Director's initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that revision is being considered and inviting data, views, and arguments. If a plant which would not otherwise qualify as a pool plant during the month qualifies as a pool plant because of a reduction in shipping requirements pursuant to this subparagraph, such plant shall be a nonpool plant for such month if the operator of the plant files a written request for nonpool plant status with the market administrator at the time the report is filed for such plant pursuant to § 1108.30;

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, unless one of the following conditions applies:

(i) If the plant is located within the marketing area and was a pool plant under this order during the immediately preceding month (except that prior pool plant qualification need not be met during the first month that the amended order is effective), it shall continue to be subject to all of the provisions of this part until the third consecutive month in which 50 percent or more of the plant's route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order; or

(ii) If the plant is located outside the marketing area and was a pool plant under this order in the immediately preceding month, it shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of the plant's route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(3) A plant qualified pursuant to paragraph (b) of this section which has automatic pooling status under another federal order.

§ 1108.7a [Removed]

5. Section 1108.7a is removed.

6. In § 1108.9(a) change the word "approved" to the words "distributing or supply" and in § 1108.9(b) change the reference from "§ 1108.12" to "§ 1108.13".

7. Section 1108.12 is revised to read as follows:

§ 1108.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted regulatory agency and whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1108.9(c); or

(3) Diverted from a pool plant in accordance with § 1108.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from another order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1108.44(a)(8)(iii) and the corresponding step of § 1108.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to another order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

8. Section 1108.13 is revised to read as follows:

§ 1108.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received by a handler described in § 1108.9(c);

(c) Picked up from the producer's farm tank in a tank truck owned and operated by, or under the control of, the operator of a pool plant but which is not received at a plant until the following month. Such milk shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month. This paragraph shall apply in like manner to milk received by the operator of a pool plant who, in

accordance with § 1108.9(c), is the handler for such milk; and

(d) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of the handler operating such pool plant or a handler described in § 1108.9(b), subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless during the month at least one day's production of such dairy farmer is physically received as producer milk at a pool plant;

(2) The total quantity of milk so diverted by a cooperative association shall not exceed, during any month of September through January, one-half of the quantity, and during all other months, the quantity, of producer milk that the cooperative association causes to be delivered to pool plants and that is physically received thereat;

(3) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d)(2) of this section. The total quantity of milk so diverted shall not exceed, during any month of September through January, one-half of the quantity, and during all other months, the quantity, of producer milk physically received at such pool plant that is eligible to be diverted by the plant operator;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d) (2) and (3) of this section shall not be producer milk. The diverting handler may designate the dairy farmers' deliveries that are not to be producer milk, otherwise the milk last diverted—in lots of an entire day's production—shall be excluded first in determining which milk should not be producer milk;

(5) The quantity of milk diverted for the account of a cooperative association from a pool plant of another handler that would cause the pool plant to become a nonpool plant shall not be producer milk; and

(6) Diverted milk shall be priced at the location of the nonpool plant to which diverted.

9. Section 1108.31 is revised to read as follows:

§ 1108.31 Payroll reports.

(a) On or before the 20th day after the end of the each month, each handler who pays producers pursuant to § 1108.73 shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address and the pounds of milk received;

(2) The prices per hundredweight, the gross amounts due, the amount and nature of any deductions, and the net amounts paid; and

(3) The dates such payments were made.

(b) On or before the 20th day after the end of each month, each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1108.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated the following information for such month:

(1) The name and address of each dairy farmer;

(2) The total pounds of milk received from each dairy farmer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

10. Section 1108.32 is revised to read as follows:

§ 1108.32 Other reports.

(a) On or before the 20th day of each month, each handler described in § 1108.9 (a) who is required pursuant to § 1108.71 (c) to make payments to the market administrator for milk received from producers and cooperative associations shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month:

(1) The name and address of each producer from whom milk was received who has not discontinued shipping milk to the handler;

(2) The total pounds of producer milk received from such producer;

(3) The amount and nature of any deductions, as authorized in writing by the producer, to be made from the partial payment for such milk;

(4) The total pounds of milk received from a handler described in § 1108.9 (c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(b) Each handler, except a producer-handler and a handler making payments pursuant to § 1108.76 (a), shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(1) On or before the seventh day of each month for each producer for the preceding month:

(i) His name and address or other appropriate identification;

(ii) The total pounds of milk and butterfat received from such producer, including, for the months of March through July the pounds of base milk;

(iii) The location at which such milk was received;

(iv) The amount and nature of any deductions, as authorized in writing by the producer, to be made from the final payment for such milk;

(v) The total pounds of skim milk and butterfat received from a handler described in § 1108.9 (c); and

(vi) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(2) On or before the first day other source milk is received in the form of a fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(3) On or before the day prior to diverting producer milk pursuant to § 1108.12 his intention to divert such milk, the date or dates of such diversion and the nonpool plant to which such milk is to be diverted.

(c) On or before the second day prior to the reporting dates specified in paragraphs (a) and (b) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred to pool plants of other handlers within the time periods described in paragraphs (a) and (b) of this section shall report to each such pool plant operator and to the market administrator the name and location of the transferor plant and the total pounds and butterfat content of the bulk fluid milk products transferred from the plant.

(d) In addition to the reports required pursuant to paragraphs (a), (b) and (c) of this section and §§ 1108.30 and 1108.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

11. Section 1108.52 is revised to read as follows:

§ 1108.52 Plant location adjustments for handlers.

(a) For milk received from producers or a handler described in § 1108.9(c) at a plant located more than 60 miles by the shortest hard surfaced highway distance as determined by the market administrator from the nearer of the county courthouse in Forrest City, Arkansas, or the State Capital in Little Rock, Arkansas, and which is classified as Class I without movement in bulk

form to another pool plant at which a higher Class I price applies, the price specified in § 1108.50(a) shall be adjusted by amount stated in paragraphs (a)(1) through (3) of this section for the location of such plant:

(1) Except as provided in paragraphs (a)(2) and (3) of this section, the adjustment shall be minus 1.5 cents for each 10 miles or fraction thereof between such plant and such nearer basing point;

(2) For a plant located within the Arkansas counties of Arkansas, Clark, Cleburne, Cleveland, Conway, Crawford, Crittendon, Cross, Dallas, Desha, Faulkner, Franklin, Garland, Grant, Hot Spring, Howard, Jefferson, Johnson, Lee, Lincoln, Logan, Lonoke, Monroe, Montgomery, Perry, Phillips, Pike, Polk, Pope, Prairie, Pulaski, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, White, Woodruff and Yell or in the States of Oklahoma and Tennessee, no location adjustment shall apply; and

(3) For a plant located in that portion of the State of Arkansas lying to the south of the no location adjustment zone specified in paragraph (a)(2) of this section or located in the States of Louisiana Mississippi or Texas, the adjustment shall be plus 1.5 cents for each 10 miles or fraction thereof between such plant and such nearer basing point.

(b) For fluid milk products transferred in bulk from a pool plant to another pool plant at which a higher Class I price applies and which are classified as Class I milk, the Class I price shall be the Class I price applicable at the location of the transferee plant subject to a location adjustment credit for the transferor plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee plant after the computations pursuant to § 1108.44 (a)(12) an amount equal to the pounds of skim milk in receipts of milk at the transferee plant from producers and handlers described in § 1108.9(c), and in receipts of packaged fluid milk products from other pool plants;

(2) Assign any remaining pounds of skim milk in Class I at the transferee plant to the skim milk in receipts of bulk fluid milk products from other pool plants, first to the transferor plants at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies;

(3) Compute the total amount of location adjustment credits to be assigned to transferor plants by multiplying the hundredweight of skim milk assigned purusant to paragraph (b)(2) of this section to each transferor plant at which the Class I price is lower than the Class I price at the transferee plant by the difference in Class I prices applicable at the transferor plant and transferee plant, and add the resulting amounts;

(4) Assign the total amount of location adjustment creidts computed pursuant to paragraph (b)(3) of this section to those transferor plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to § 1108.42(a) and at which the applicable Class I price is less than the Class I price at the transferee plant, in sequence beginning with the plant at which the highest Class I price applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the applicable adjustment rate determined pursuant to paragraph (b)(3) of this section for such plant. If the aggregate of this computation for all plants having the same adjustment rate as determined pursuant to paragraph (b)(3) of this section exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I transfers from such plants; and

(5) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraphs (b)(1) through (4) of this section.

(c) The Class I price applicable to other source milk shall be adjusted by the amounts set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

12. In § 1108.60, a new paragraph (g) is added to read as follows:

§ 1108.60 Handler's value of milk for computing uniform price.

* * * * *

(g) Subtract for a handler described in § 1108.9(c) the amount obtained from multiplying the Class III pirce as adjusted by the butterfat differential specified in § 1108.74 for the preceding month by the hundredweight of skim milk and butterfat contained in inventory at the beginning of the month that was delivered to a pool plant during the month.

13. In § 1108.61, paragraph (a)(2) is revised to read as follows:

§ 1108.61 Computation of uniform prices (including weighted average price and base and excess prices).

(a) * * *

(2) Add the aggregate of all minus location adjustments and subtract the aggregate of all plus location adjustments pursuant to § 1108.75.

* * * * *

14. Sections 1108.71, 1108.72 and 1108.73 are revised to read as follows:

§ 1108.71 Payments to the producer-settlement fund.

(a) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 14th day after the end of the month the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1108.60.

(2) The sum of:

(i) The value at the uniform prices, as adjusted pursuant to § 1108.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value was computed pursuant to § 1108.60(f).

(b) Subject to paragraph (d) of this section, each person who operated an order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator on or before the 25th day after the end of each month an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

(c) Any handler who the market administrator determines was more than 3 days late in making any payment obligation under Part 1108 shall pay to the market administrator the amount the handler would have otherwise been required to pay to producers and cooperative associations pursuant to

§ 1108.73. Payment shall be made to the market administrator on or before the day prior to the dates specified in § 1108.73 and such payments shall continue until the handler has met all payment obligations for 3 consecutive months.

(d) The following conditions shall apply with respect to payments prescribed in paragraphs (a), (b) and (c) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator.

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

(3) Payments due the market administrator from a cooperative association handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1108.73 (b) and (d).

§ 1108.72 Payments from the producer-settlement fund.

(a) On or before the 15th day after the end of each month the market administrator shall pay to each handler except one making payment pursuant to § 1109.71(c) the amount, if any, by which the amount computed pursuant to § 1109.71(a)(2) exceeds the amount computed pursuant to § 1108.71(a)(1).

(b) If the market administrator received payment from a handler(s) pursuant to § 1108.71(c), he shall distribute such amount plus any amount due such handler(s) pursuant to paragraph (a) of this section to producers and to cooperative associations in the same manner as provided in § 1108.73. In the event the handler fails to transmit the total amount due, the market administrator shall reduce uniformly the payments due to producers of such handler and complete such payments when the remaining amount is received.

(c) If at any time the balance in the producer-settlement fund is insufficient to make all payments pursuant to paragraph (a) of this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1108.73 Payments to producers and to cooperative associations.

(a) Except as provided in § 1108.71(c) and paragraphs (b), (d) and (f) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1)(i) On or before the last day of each month of March through July to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the previous month's Class III price muliplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized in writing by the producer, provided that the deductions do not exceed the value of the milk received during the partial payment period and the handler has paid such deductions to assignees by the date payment is otherwise due the producer.

(ii) On or before the last day of each month of August through February to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, and amount equal to not less than the previous month's Class III price plus $1.00, and further adjusted by the zone or location adjustment applicable at the receiving plant multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized in writing by the producer from whom the handler received milk, except that the amount deducted shall not exceed the value of the milk received during the partial payment period and provided that the handler has paid such deductions to assigness by the date payment is otherwise due the producer.

(2) On or before the 17th day of the following month, an amount equal to not less than the appropriate uniform price(s) adjusted by the butterfat differential and location adjustments to producers multiplied by the hundredweight of milk, or base milk and excess milk, received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1108.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer, provided that the deductions do not exceed the value of the milk received during the final payment period and the handler has paid such deductions to assignees by the date payment is otherwise due the producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1108.72(a) for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) Except as provided in paragraph (f) of the section, in the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, such handler other than one specified in § 1108.71(c) shall on or before the 2nd day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from the producer members of such association as determined by the market administrator an amount equal to not less than the amount due such producer members as determined pursuant to paragraph (a) of this section.

(c) Each handler making payment pursuant to this section shall furnish the person to whom payment is to be made with the following information:

(1) On or before the 25th day of the month, the pounds of milk received from the producer or from each member of the cooperative association during the first 15 days of such month;

(2) On or before the 7th day of the following month to a cooperative association for its individual members, or on or before the 15th day of the following month to producers:

(i) The pounds of milk received each day and the total for the month, together with the butterfat content of such milk;

(ii) For the months of March through July, the pounds of base milk received;

(iii) The amount or rate and nature of deductions made from payments; and

(iv) The amount and nature of payments due pursuant to § 1108.77.

(d) Except as provided in § 1108.71(c) and paragraph (f) of this section, each handler shall make payment to a cooperative association with respect to receipts of milk for which it is the handler described in § 1108.9(c):

(1) On or before the 2nd day prior to the last day of the month, an amount equal to the applicable partial payment rate specified in paragraph (a)(1) of this section times the volume received

during the first 15 days of the delivery period; and

(2) On or before the 15th day after the end of each month, an amount equal to not less than the value of such milk at applicable class price(s) adjusted by the butterfat differential pursuant to § 1108.74 less payment made pursuant to paragraph (d) (1) of this section.

(e) Subject to § 1108.71(c), each handler who received bulk fluid milk and bulk fluid cream products from a pool plant operated by a cooperative association shall pay the following amounts for such products to the cooperative association:

(1) On or before the 2nd day prior to the last day of each month, an amount determined by multiplying such receipts during the first 15 days of the month by the applicable partial payment rate specified in paragraph (a)(1) of this section. If the handler so elects, such prices may be adjusted by the butterfat differential specified in § 1108.74 for the preceding month.

(2) On or before the 15th day after the end of each month, an amount determined by multiplying the quantity of such receipts during the month that was classified in each class pursuant to § 1108.42(a) by the applicable class price, as adjusted by the butterfat differential specified in § 1108.74, less any payments made by the handler pursuant to paragraph (e)(1) of this section for such month. For the purpose of such computation, the applicable Class I price shall be the Class I price applicable at the transferee plant plus the applicable administrative assessment rate.

(f) If the application of § 1108.71(d)(2) results in a delay in the payment by the market administrator to handlers, the payments prescribed in paragraphs (a), (b) and (d) of this section may be delayed by the same number of days.

(g) If the market administrator does not receive the full payment required of a handler pursuant to § 1108.71(c), he shall reduce uniformly per hundredweight the payments due producers and cooperative associations for their milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler.

15. Section 1108.75 is revised to read as follows:

§ 1108.75 Plant location adjustments for producers and on nonpool milk.

(a) In making the payments required pursuant to § 1108.73, the uniform price and uniform price for base milk computed pursuant to § 1108.61 for the month shall be adjusted by the amounts set forth in § 1108.52 according to the location of the plant where the milk being priced was received.

(b) For purposes of computing the value of other source milk pursuant to § 1108.71, the weighted average price shall be adjusted by the amount set forth in § 1108.52 that is applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

16. A new § 1108.78 is added to read as follows:

§ 1108.78 Charges on overdue accounts.

(a) Any unpaid obligation of a handler pursuant to §§ 1108.71, 1108.73, 1108.76, 1108.77, 1108.85 or 1108.86 shall be increased one percent beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions;

(1) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid overdue charges previously computed pursuant to this section; and

(2) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(b) All charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

17. Section 1108.85 is revised to read as follows:

§ 1108.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 6 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in § 1108.9(c) that were delivered to pool plants of other handlers or held in inventory at the end of the month;

(b) Receipts from a handler described in § 1108.9(c);

(c) Other source milk allocated to Class I pursuant to § 1108.44 (a)(7) and (11) and the corresponding steps of § 1108.44(b), except such other source milk that is excluded from the computations pursuant to § 1108.60 (d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1108.76(a)(2).

18. Section 1108.86 is revised to read as follows:

§ 1108.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of a handler's own farm production) pursuant to § 1108.73 shall deduct seven cents per hundredweight, or such amount not exceeding seven cents per hundredweight as may be prescribed by the Secretary. Each handler making such deductions shall pay the deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the sampling, testing and weighing of their milk for producers who are not receiving such service from a cooperative association; and

(b) In the case of producers for whom a cooperative association, as determined by the Secretary, is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association rendering such services accompanied by a statement showing the amount of milk for which such deduction was computed for each producer.

Signed at Washington, D.C. on: September 22, 1981.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 81-28046 Filed 9-28-81; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 802-3099]

Volkswagen of America, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require, among other things, a Warren, Mich., producer and seller of motor vehicles and replacement parts to cease including in owners' manuals for diesel engine vehicles any instructions for oil filter installation that differ from those provided to its dealers. The order would require the company to include in future maintenance manuals a conspicuous statement warning of the need to follow oil filter installation instructions carefully to avoid serious engine damage. Further, the firm would be required to reimburse current and past owners of 1977–1981 Volkswagen and Audi diesels for repairs which resulted from oil filter leaks; notify these owners of the reimbursement offer by first class mail; and provide them with currently recommended oil filter installation information. Additionally, the company would be required to locate and pay reimbursement to eligible owners in a timely manner, and maintain specified records for a period of three years.

DATE: Comments must be received on or before November 27, 1981.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/PE, Robert M. Doyle, Washington, D.C. 20580. (202) 724–1996.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

Before Federal Trade Commission

Agreement Containing Consent Order To Cease and Desist

In the Matter of Volkswagen of America, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Volkswagen of America, Inc. a corporation, and it now appearing that Volkswagen of America, Inc., a corporation, sometimes hereinafter referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Volkswagen of America, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent, Volkswagen of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 27621 Parkview Road, Warren, Michigan.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

8. By its final acceptance of this Agreement, the Commission waives its right to commence a proceeding or action against respondent seeking redress to consumers or others with respect to the specific acts or practices alleged in paragraphs FOUR through NINE of the proposed complaint which occurred prior to the date of service of the Order. Nothing, however, in this paragraph shall affect the relief which may be ordered to remedy the acts or practices alleged in Docket No. 9154 insofar as such relief is not based on those specific acts or practices alleged in Paragraphs FOUR though NINE of the proposed complaint which occurred prior to the date of service of this order.

Order

For purposes of this order, the following definitions shall apply:

1. "Dealer" shall mean any authorized United States Volkswagen or Audi dealer regardless of whether the dealer purchases vehicles directly from respondent or from a distributor of respondent.

2. "Owner" shall mean any individual or entity in whose name a vehicle is currently or has been previously registered or titled with the appropriate state authority, including, but not limited to, vehicles held for resale.

3. "Current owner" shall mean any owner in whose name a vehicle is registered or titled with the appropriate state authority. Respondent shall use any one or more of the

following methods to obtain the most up to date and complete list available of the names and addresses of current owners in carrying out its obligations under Parts I and III of this Order: state records, a commercial locator service, or respondent's records. If the name and address of the current owner cannot be ascertained, then "current owner" shall also mean the most recent purchaser known to respondent, respondent's dealers, or both.

4. "Engine repairs due to oil filter leaks" shall consist of expenses necessitated by an oil filter leak for engine repair or engine replacement, plus towing charges, oil and oil filter replacement. It does not include reimbursement for towing charges, oil, and replacement oil filter(s) if no engine repair or engine replacement was undertaken.

5. "Oil filter leak(s) shall mean any leakage of lubricating oil from the oil filter or from the area where the oil filter is attached to the engine.

Part I

It is ordered that respondent Volkswagen of America, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or indirectly or through any corporation, subsidiary, division, or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of any vehicle or vehicle part, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from representing in any owner's manual for its diesel engine vehicles an oil filter installation procedure that is different in substance from that provided to its dealers with respect to vehicles covered by such manual, unless respondent notifies affected current owners via first class mail that the installation procedure set out in their owner's manuals is different in substance from that provided to respondent's dealers and in what respects the instructions differ, *provided, however*, that respondent need not make the notification required by this Part if,

1. The newly recommended oil filter installation instructions do not require any wrenches or special tools to tighten the filter; and

2. Respondent possesses competent and reliable engineering evidence which substantiates that installation of the oil filter under normal field conditions without any wrenches or other special tools to tighten the filter will be at least as effective in preventing oil filter leaks as installation of the filter with any wrenches or special tools.

Part II

It is further ordered that respondent Volkswagen of America, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or indirectly or through any corporation, subsidiary, division, or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of any vehicle or vehicle part, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall:

A. Include, verbatim, using distinctive and conspicuous type face or ink color or both, which shall be at least as distinctive and conspicuous as the type face or ink color or both used elsewhere in owner's manuals for important maintenance items, the following statement in owner's manuals of Volkswagen and Audi vehicles with diesel engines beginning in the 1982 model year: "Follow these instructions Carefully. An Improperly Insalled Filter May Leak and Damage Your Engine."

B. Beginning 30 days following the date this order is served on respondent, print clearly and conspicuously on all oil filters which are sold by respondent and which are recommended for application on respondent's diesel engine vehicles:

1. The most current installation instructions; and

2. The following statement, verbatim: "*Important:* Follow These Instructions Carefully. An Improperly Installed Filter May Leak and Damage Your Engine."

C. Disseminate, by respondent's usual methods, within 30 days following the date this order is served upon respondent, a Product Circular to Volkswagen and Audi dealers which effectively communicates the following:

1. That oil filter leaks on diesel engines have occurred; and

2. That mechanics should be sure to install the filters according to the most current procedures.

Part III

It is further ordered that respondent, within 30 days following the service of this order on respondent, shall:

A. Send by first class mail to each current owner of a 1977 through 1981 model year Volkswagen and Audi vehicle equipped with a diesel engine a copy of Exhibits A, B and E and a postage-paid self-addressed return envelope.

B. Send by first-class mail a copy of Exhibits B, C and E and a postage-paid self-addressed return envelope to any owner of a 1977 through 1981 model year Volkswagen or Audi vehicle equipped with a diesel engine who requests information concerning reimbursement for oil filter leaks.

C. Search its warranty and complaint records and those of its distributors to ascertain the names and addresses of owners who had previously complained about and not received full reimbursement for engine repairs due to oil filter leaks on diesel engines. Owners whose names appear on any such records shall be sent by first class mail Exhibits B, D1, and E and a postage-paid self-addressed return envelope; *Provided, however*, That where records clearly establish an owner's entitlement to and amount of reimbursement under Part IV of this order, respondent shall send a check for such amount and Exhibits D2, B, and E.

Part IV

It is further ordered that respondent:

A. Provide reimbursement to each owner of a 1977 through 1981 model year Volkswagen or Audi vehicle equipped with a diesel engine who has unreimbursed expenses for engine repairs due to an oil filter leak, which occurred prior to 30 days after the owner's receipt of a letter sent pursuant to Parts III A, B or C of the order or 60 days after the date of mailing of such letter, whichever comes first; *Provided, however*, That respondent need not reimburse an owner for an engine repair due to an oil filter leak if the oil filter on the vehicle at the time of the leak had not been distributed by respondent, unless the leak was approximately caused by a Volkswagen or Audi original equipment or replacement part for which repair or replacement was necessary; *Provided, further, however*, That respondent may deny reimbursement to owners whose initial request in writing for reimbursement is received more than two (2) years after the date this order is served upon respondent or more than six (6) months after the owner has received a letter pursuant to Part III A, B, or C of this order, whichever comes first.

B. Shall pay full reimbursement for engine repairs due to an oil filter leak upon presentation by an owner of reasonable evidence that the owner is eligible for reimbursement pursuant to Part IV A above; *Provided, however*, respondent may perform a documented inquiry concerning a claim if it believes for good cause that the owner may not be eligible to receive the amount claimed by the owner. Such an inquiry must begin and any request that an owner provide further information must be sent within 30 days after the owner has mailed a copy of Exhibit B to respondent or otherwise requested reimbursement in writing.

C. Shall within the 30 days set out in Part IV B mail to the owner a check for the amount claimed by the owner unless:

1. Respondent both begins an inquiry and notifies the owner in writing that an inquiry is being conducted; or

2. Respondent denies reimbursement for some or all of the amount claimed by the owner, and sends the owner a letter pursuant to Part IV F, below.

D. Shall complete each inquiry conducted pursuant to Part IV B:

1. Within sixty (60) days after the owner has mailed a copy of Exhibit B to respondent or otherwise requested reimbursement in writing; or

2. Within thirty (30) days following the mailing to respondent of any response to a request for additional information sent to an owner as part of an inquiry conducted pursuant to Part IV B, whichever is later.

E. Shall, upon completion of each inquiry, send the owner a check, a letter pursuant to Part IV F, or both.

F. Shall send a letter by first class mail to each owner who has been denied reimbursement for some or all of the amount claimed by the owner. This letter shall:

1. Notify the owner of the disposition of the claim;

2. Give specific reasons for the disposition;

3. Inform the owner that he/she may have other legal rights;

4. If available in the area where the owner lives, inform the onwer of the existence of the Better Business Bureau Arbitration program and the following:

a. That the program is operated free of charge to the owner;

b. That by choosing arbitration both parties may give up the right to have the facts of the dispute decided in court;

c. That the arbitrator's decision is binding and may be enforced in court;

d. That the arbitrator's decision can be appealed only for limited reasons; and

e. That owners who want more information should contact their local Better Business Bureau; and

5. Inform the owner that the oil filter reimbursement program is being conducted by agreement between Volkswagen of America and the Federal Trade Commission, and that if he/she believes his claim was improperly denied he/she may contact the FTC's Compliance Division of the Bureau of Consumer Protection at 6th and Pennsylvania Avenue, NW, Washington, D.C. 20580.

Part V

It is further ordered that respondent shall maintain accurately and retain for a period of three (3) years following the service of this order on respondent the following records which may be inspected by Commission staff members upon fifteen (15) days' notice:

1. A list, by state and, for each state, in alphabetical order, (or a data base from which such list may be readily complied) containing the names and addresses of each owner of a Volkswagen and Audi vehicle to whom Exhibits A–E were sent and the dates such letters were sent to each;

2. A list, by state and, for each state, in alphabetical order, containing the name and address of each owner of a Volkswagen or Audi vehicle who received a check pursuant to Part IV C and each owner who requested reimbursement from respondent pursuant to Exhibit B or another writing and, for each, the date such request was received by respondent, the total dollar amount of such request. Respondent shall also maintain all documents initially submitted by owners and each of the following as applicable to such owner: documents indicating whether follow-up information was requested and the date such information was requested; all additional information submitted in response to any request for follow-up information and the date such information was received; documents relating to any inquiry by respondent of the circumstances surrounding such owner's claim; all documents indicating the total dollar amount of reimbursement, if any, such owner was sent, the date it was sent, and a copy of the notice of final disposition of the claim, if sent to such owner.

Part VI

It is further ordered that any and all correspondence sent by respondent pursuant to the provisions of this order shall be on respondent's corporate stationery. All envelopes sent pursuant to Part III shall contain no marking other than respondent's name and return address, the postage marking, the name and address of the addressee, and the words "IMPORTANT MAINTENANCE AND REIMBURSEMENT INFORMATION" disclosed conspicuously on the front.

Part VII

It is further ordered that respondent shall send a copy of this order to each of its dealers.

Part VIII

It is further ordered that no provision of this order shall be construed to limit, in any way, any private right of action which any individual, partnership, corporation or other entity might have against respondent or against any oil filter manufacturer.

Part IX

It is further ordered that the respondent shall forthwith distribute a copy of this order to each of its operating divisions, to its successors and assigns.

Part X

It is further ordered that for so long as any other provisions of this order remain in effect respondent notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

Part XI

It is further ordered that respondent shall within sixty (60) days after service upon it of the order, and also annually for two (2) years thereafter, file with the Commission reports in writing, setting forth in detail the manner and form in which it has complied with this order.

Part XII

It is further ordered that Parts I and II A and B of the order shall termiante at any time if,

1. Respondent's oil filter installation instructions do not provide for any wrenches or special tools to tigthen the filter, and

2. Respondent possesses competent and reliable engineering evidence which substantiates that the installation of the oil filter without the use of wrenches or special tools under normal field conditions would be substantially as effective in preventing oil filter leaks as installation of the filter with wrenches or special tools.

Exhibit A

Important Maintenance and Reimbursement Information

Dear [Volkswagen] [Audi] Diesel Owner:
Some [Volkswagen] [Audi] diesel owners have reported oil leaks in the oil filter area of the engine. On occasion, this can lead to severe engine damage. Therefore, we'd like to tell you some important news about:

- new recommendations for oil filter installation procedures which can help prevent oil filter leak problems, and
- our reimbursement offer for past problems and warranty coverage for future problems like this.

Installation Instructions

We've modified the diesel oil filter instructions to emphasize that the filter must be properly mounted and tightened. You or the mechanic must follow these instructions carefully to guard against oil leaks. Use the correct tools to tighten the filter and check the mounting torque. These new instructions are enclosed. *Please staple them to the cover of your owner's manual and make sure they are followed each time an oil filter is installed.*

Reimbursement Offer

If you paid for engine repairs caused by an oil leak in the filter area, and were not reimbursed, and the filter was an Autobahn (VW/Audi) filter, we'll reimburse you for engine repairs, oil, filter, and towing. If the filter was not a VW/Audi/Autobahn filter, we'll pay for repairs only if a VW/Audi engine part that had to be repaired or replaced caused the problem. This offer covers engine repairs which occured prior to or within 30 days after you receive this letter. If our coverage doesn't apply to engine repairs you paid for, check to see if the filter manufacturer will reimburse you for expenses.

Don't forget that your car's warranty may also provide coverage for these and other repair problems in the future. The "new vehicle limited warranty" covers defects in materials and workmanship for [12 months or 20,000 miles, whichever comes first (VW)]. [12 months, regardless of mileage (Audi)]. The "replacement parts limited warranty" covers such defects for six months or 6,000 miles.

Complete the Enclosed Form

If you believe you may be entitled to reimbursement under this program, complete the enclosed form and send it to us. *Even if you were previously denied warranty service or if you aren't sure you're eligible, send in the form.* Within 30 days, we'll send you a check or contact you with information about the status of your claim.

You must send in your form within six months after your receive this letter to qualify for this reimbursement offer. If you have any questions, don't hesitate to contact us or your local dealer.

Sincerely,

Volkswagen of America, Inc.

Reimbursement Request Engine Repair Due To Diesel Oil Filter Leak

Instructions: *Make sure you follow these instructions carefully.* If we don't have enough information your claim might be delayed.

Attach to this form legible copies of all the documents you have which support your claim including receipts, repair orders, cancelled checks or money orders. If you don't have a repair order, get a short statement from the garage or dealership where the repair was done which tells us what work was done, and why.

We will reimburse you for engine repairs, oil, a new oil filter, and towing if you qualify for reimbursement. We will *not* reimburse you if your only damage was loss of oil and towing.

Name _____
VIN _____
[Preprinted] _____
City _____
State _____
Zip Code _____
Phone ( ) _____
Total Amount Actually Paid: $ _____

Brand of Filter ———————

To the best of my knowledge, the above claim is for expenses I had to pay for which I was not reimbursed and which resulted from an oil leak from my car's oil filter.

I hereby certify that the above information is true and correct.

Date ———————

Signature ———————

BE SURE TO ENCLOSE ALL YOUR PROOF WHEN YOU MAIL US THIS FORM!

Exhibit C

Important Maintenance and Reimbursement Information

Dear [Volkswagen] [Audi] Diesel Owner:
Thank you for contacting us about oil filter leaks on our diesel engines. Some [Volkswagen] [Audi] diesel owners have reported oil leaks in the oil filter area of the engine. On occasion, this can lead to severe engine damage. Therefore, we'd like to tell you some important news about:

- new recommendations for oil filter installation procedures which can help prevent oil filter leak problems, and
- our reimbursement offer for past problems and warranty coverage for future problems like this.

Installation Instructions

We've modified the diesel oil filter instructions to emphasize that the filter must be properly mounted and tightened. You or the mechanic must follow these instructions carefully to guard against oil leaks. Use the correct tools to tighten the filter and check the mounting torque. These new instructions are enclosed. *Please staple them to the cover of your owner's manual and make sure they are followed each time an oil filter is installed.*

Reimbursement Offer

If you paid for engine repairs caused by an oil leak in the filter area, and were not reimbursed, and if the filter was an Autobahn (VW/Audi) filter, we'll reimburse you for engine repairs, oil, filter, and towing. If the filter was not a VW/Audi/Autobahn filter, we'll pay for repairs only if a VW/Audi engine part that had to be replaced caused the problem. This offer covers engine repairs which occured prior to or within 30 days after you receive this letter. If our coverage doesn't apply to engine repairs you paid for, check to see if the filter manufacturer will reimburse you for expenses.

Don't forget that your car's warranty may also provide coverage for these and other repair problems in the future. The "new vehicle limited warranty" covers defects in materials and workmanship for [12 months or 20,000 miles, whichever comes first (VW)]. [12 months, regardless of mileage (Audi)]. The "replacement parts limited warranty" covers such defects for six months or 6,000 miles.

Complete The Enclosed Form

If you believe you may be entitled to reimbursement under this program, complete the enclosed form and send it to us. *Even if you were previously denied warranty service or if you aren't sure you're eligible, send in the form.* Within 30 days, we'll send you a check or contact you with information about the status of your claim.

You must send in your form within six months after you receive this letter to qualify for this reimbursement offer. If you have any questions, don't hesitate to contact us or your local dealer.

Sincerely,

Volkswagen of America, Inc.

Exhibit D1

Important Maintenance and Reimbursement Information

Dear [Volkswagen] [Audi] Diesel Owner:
Our records show that your car has experienced an oil filter leak. As you may know, on occasion, this can lead to severe engine damage. Therefore, we'd like to tell you some important news about:

- new recommendations for oil filter installation procedures which can help prevent oil filter leak problems, and
- our reimbursement offer for past problems and warranty coverage for future problems like this.

Installation Instructions

We've modified the diesel oil filter instructions to emphasize that the filter must be properly mounted and tightened. You or the mechanic must follow these instructions carefully to guard against oil leaks. Use the correct tools to tighten the filter and check the mounting torque. These new instructions are enclosed. *Please staple them to the cover of your owner's manual and make sure they are followed each time an oil filter is installed.*

Reimbursement Offer

If you paid for engine repairs caused by an oil leak in the filter area, and were not reimbursed, and the filter was an Autobahn (VW/Audi) filter, we'll reimburse you for engine repairs, oil, filter, and towing. If the filter was not a VW/Audi/Autobahn filter, we'll pay for repairs only if a VW/Audi engine part that had to be repaired or replaced caused the problem. This offer covers engine repairs which occured prior to or within 30 days after you receive this letter. If our coverage doesn't apply to engine repairs you paid for, check to see if the filter manufacturer will reimburse you for expenses.

Don't forget that your car's warranty may also provide coverage for these and other repair problems in the future. The "new vehicle limited warranty" covers defects in materials and workmanship for [12 months or 20,000 miles, whichever comes first (VW)]. [12 months, regardless of mileage (Audi)]. The "replacement parts limited warranty" covers such defects for six months or 6,000 miles.

Complete the Enclosed Form

If you believe you may be entitled to reimbursement under this program, complete the enclosed form and send it to us. *Even if you wre previously denied warranty service or if you aren't sure you're eligible, send in the form.* Within 30 days, we'll send you a check or contact you with information about the status of your claim.

You must send in your form within six months after you receive this letter to qualify for this reimbursement offer. If you have any questions, don't hesitate to contact us or your local dealer.

Sincerely,

Volkswagen of America, Inc.

Exhibit D2

Important Reimbursement Check Enclosed

Dear [Volkswagen] [Audi] Diesel Owner:
Our records show that you experienced engine damage related to an oil filter leak on your [Volkswagen] [Audi] diesel vehicle and that reimbursement for your repair costs was not made available in your case.

We have recently reconsidered your claim. On the basis of our review, we have determined that reimbursement was appropriate and should have been granted.

Accordingly, we are pleased to enclose our check in the amount of $. We regret the delay. However, we are pleased that we were able to be of assistance.

If this amount is less than what you paid for engine repairs due to an oil filter leak, oil, a new oil filter, and towing, fill out the attached form and return it to us in the enclosed postage-paid envelope. Even if you request additional reimbursement, you can still cash this check. Within 30 days, we'll send you an additional check or contact you with information about the status of your claim.

If you do request additional reimbursement under this offer, you must send in your form within 6 months after you receive this letter. If you have any questions, don't hesitate to contact us or your local dealer.

Installation Instructions

We've modified the diesel oil filter instructions to emphasize that the filter must be properly mounted and tightened. You or the mechanic must follow these instructions carefully to guard against oil leaks. Use the correct tools to tighten the filter and check the mounting torque. These new instructions are enclosed. *Please staple them to the cover of your owner's manual and make sure they are followed each time an oil filter is installed.*

Sincerely,

Volkswagen of America, Inc.

Exhibit E

Oil Filter Installation Instructions

1. Use VW Part No. 068 115 561 or equivalent. [For Owner's Manual and Exhibit E only]
2. Apply thin film of Engine oil to filter gasket. (Do not use grease.)
3. Screw on filter by hand until filter gasket contacts flange firmly all round.
4. Tighten filter ¾ turn. Use VW filter cap wrench US–4496 or equivalent, wrench extension, and standard torque wrench.
5. Check dipstick for correct oil level.
6. Run engine at various speeds for 3–5 minutes.
7. Stop engine, use filter cap wrench (center drive socket), extension and torque wrench for final check. Torque must be at least 18 ft. lbs.
8. Re-check dipstick for correct oil level, add oil as needed.

9. Start engine and check for proper seal at the oil filter gasket.

Important: Follow these instructions carefully. An improperly installed filter may leak and damage your engine.

[Figure 17–A14 from 1981 Rabbit Owners Manual, P. 93]

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Volkswagen of America, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments from interested parties. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint in this matter concerns costly oil filter leakage problems on Volkswagen's diesel engine vehicles sold since their introduction in the 1977 model year. The complaint, which was placed on the public record by the Commission along with the proposed consent order, alleges that Volkswagen of America knew of the filter problems but failed to disclose important facts to owners of diesel vehicles about them. This information—namely, the details of an unusual and exacting oil filter installation procedure—would have enabled owners to minimize the chance of oil filter leaks occurring on their vehicles.

The complaint alleges, more specifically, that owner's manuals for VW's 1977–1980 diesel engine vehicles instructed owners to install replacement oil filters according to the customary "hand-tightening" method. However, the complaint alleges VW has notified its dealer network to install replacement filters on diesel engine vehicles using particular wrenches to tighten the filter sufficiently to avoid leaks. The complaint also charges that VW never told the owners of these vehicles about the instructions recommended to the dealers, nor about the likelihood of filter leaks. Accordingly, the complaint alleges further that VW's failure to disclose this information misled owners and caused substantial economic harm, and thus constituted a violation of Section 5 of the Federal Trade Commission Act.

In the proposed order, Volkswagen of America has agreed to take steps to provide redress to consumers who have had costly engine repairs resulting from oil filter leaks and to provide information to consumers so oil filter leaks will occur less often in the future. The order provides that VW will:

1. Offer to reimburse current and past owners of 1977–1981 VW and Audi diesel vehicles for engine repairs which resulted from oil filter leaks. If the leaking filter was a VW-brand filter, reimbursement will be available regardless of the cause of the leak; if the filter was a non-VW aftermarket brand, reimbursement will be available only if an engine problem caused the leak;

2. Notify current owners of 1977–1981 VW and Audi diesels by first class mail of the reimbursement offer and of the currently recommended oil filter installation procedures for diesel engines;

3. In the future, not have in its diesel engine owner's manual an installation procedure that differs in substance from that provided to its dealers unless the owner is notified of a difference in procedures.

4. Place in its owner's manuals and on its own brand (VW/Audi/Autobahn) replacement filters a conspicuous statement warning of the need to follow oil filter installation instructions carefully to avoid serious engine damage.

Volkswagen of America's obligations under these latter two provisions will terminate if, at some time in the future, VWoA recommends oil filter installation instructions which no longer provide for the use of a wrench and thus only require "hand-tightening"—the procedure customarily followed by customers and mechanics in installing oil filters—and if VWoA can substantiate that "hand-tightening" will be substantially as effective an installation procedure as tightening the filter with a wrench.

Impact of the Order

The order will have a beneficial effect on owners of VW and Audi diesel engine vehicles. The most important benefit will be notification to owners of the oil filter leakage problem and the improved installation procedures. This notification will minimize the incidence of leakage and resulting engine damage (up to $2,000 in repair bills) and thus reduce overall repair costs. The notification is particularly important because an increasingly large number of owners will perform oil and filter changes themselves as their vehicles get older. Industry data shows that more than one-third of car owners perform their own oil changes. Without the VW recommended installation procedures specifying a wrench, many consumers will continue to install filters in the customary way—by hand tightening—and thus increase the risk of a serious filter leak.

The second significant effect of the order will be the reimbursement program for past oil filter leaks. Although it is not clear how many consumers will be reimbursed, at least several thousand diesel owners have had oil filter leaks, many of which resulted in engine damage. Some of these owners, however, have been previously reimbursed or had free repairs under the terms of VWoA's warranties or by dealers, independent garages, or other filter manufacturers.

The agreement indicates the Commission's view that a company may be in violation of Section 5 of the Federal Trade Commission Act if it fails to correct material use and care information that it has given to purchasers and that it subsequently learns (or should have learned) is erroneous. This agreement may encourage other manufacturers to disclose corrected use and care information under similar circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 81-28094 Filed 9-28-81; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 606

[Docket No. 80N-0120]

Labeling Requirements for Blood and Blood Components; Clarification of Proposed Rule

AGENCY: Food and Drug Administration.

ACTION: Clarification of proposed rule.

SUMMARY: The Food and Drug Administration (FDA) clarifies the proposed labeling requirements for blood and blood components published in the **Federal Register** of October 31, 1980. FDA advises that all blood banks should continue using any existing color codes until FDA's final decision on whether to change the color coding system is published as a final regulation in the **Federal Register.** This action is based on comments received on that proposal.

EFFECTIVE DATE: September 29, 1981.

FOR FURTHER INFORMATION CONTACT: Rada Proehl, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: In a proposal entitled "Current Good Manufacturing Practice for Blood and Blood Components; Uniform Blood Labeling" published in the **Federal Register** of October 31, 1980 (45 FR 72416), FDA proposed to revise the labeling requirements for blood and blood components. The proposal also announced the availability of a guideline describing the specifications for a uniform container label complying with the proposed regulations. The proposed revisions and guidelines were developed in response to the recommendations of the American Blood Commission's Committee for Commonality in Blood Banking Automation.

The proposal stated that FDA is encouraging the immediate voluntary use of labels and instruction circulars complying with the proposed regulation. The proposal further stated, however, that ABO blood group color coding under proposed § 606.121(d)(3) (21 CFR 606.121(d)(3)) may not be optionally introduced for 2 years after the date of publication of the final rule in the **Federal Register.** To ensure that there will be no overlap or conflict with the color coding currently in use, § 606.121(d)(3) specifically proposed an interim transition period of 1 year beginning on the effective date of the final rule during which no color coding would be permitted.

In response to the proposal, FDA has received 20 comments strongly objecting to the proposed new color code for blood product labels. The consensus of opinion in the comments is that there is no good reason to change the ABO color coding of blood labels, and there are numerous reasons to leave it as is. The comments stated that the existing difference between colors of the current ABO container labels and the ABO typing reagents has been in effect for over three decades and has never presented a problem. Because ABO errors cause most of the avoidable deaths due to transfusion, the comments state further that the introduction of new ABO color codes only introduces additional confusion which could increase ABO errors. Furthermore, the comments argued that the proposed label change creates an unwarranted financial burden on blood banks by reducing the advantage of large orders and possibly resulting in the wasting of existing printed colored labels. The proposed label change also was said to permit insufficient time to reeducate the thousands of health care professionals using the current system. The comments stated further that additional expense is incurred because of the needed correction in the records of some institutions and in textbooks and other educational material to be consistent with the proposed color change. Two comments also pointed out that for blood components such as Frozen Red Blood Cells (Human) and Single Donor Plasma (Human) which have a storage time in excess of 2 years, and which are prepared for transfusion after the proposed transition period, it would be possible to have the same product labeled with either the old or the new ABO color code depending on when the product was originally labeled.

As a result of the comments received providing practical reasons against the proposed changes in ABO color coding, the agency is reemphasizing its caution stated in the preamble of the proposal that "* * * the guidelines may be revised at the time of publication of the final rule in response to comments received or any changes in the labeling requirements contained in the final rule" (45 FR 72417). Accordingly, FDA cautions that there is a reasonable chance that color labels prepared in accordance with the proposal may be unacceptable under the final rule. Therefore, all blood banks should continue using any existing color codes until FDA's decision on this matter is published as a final regulation in the **Federal Register.** FDA emphasizes that voluntary compliance with the other proposed label changes is not affected by this clarification.

Effective date. This clarification is effective September 29, 1981.

Dated: September 22, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-28169 Filed 9-28-81; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF DEFENSE

32 CFR Part 199

[DoD 6010.8-R]

Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Correction

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Extension of comment period; correction.

SUMMARY: The Department of Defense is making typographical changes to an extension of the comment period on implementation of the Civilian Health and Medical Program of the Uniformed Services which was published on September 21, 1981, (46 FR 46597). This action changes the dates, "January 1, 1981" to "January 1, 1982", that appears twice in the middle column of page 46597, and also, this changes "September 30, 1981" to "September 30, 1982" which also appears in the middle column of page 46597.

FOR FURTHER INFORMATION CONTACT: M. S. Healy, Chief, Directives Division, OSD/WHS, telephone 202-697-4111.

SUPPLEMENTARY INFORMATION: This concerns the extension of comment period on a proposed amendment to Part 199 of this title to eliminate residential treatment centers (RTCs). If adopted as a final rule, the amendment will be effective for new admissions to RTCs on and after January 1, 1982; and also, if adopted, the transition period for those CHAMPUS residents in an RTC as of January 1, 1982, will be 9 months (instead of 12 months as originally announced), with all RTC benefits still terminating as of September 30, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

September 23, 1981

[FR Doc. 81-28031 Filed 9-28-81; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL 1892-2]

Approval and Promulgation of Implementation Plans; Arizona Lead State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA promulgated National Ambient Air Quality Standards (NAAQS) for lead on October 5, 1978 (43 FR 46246). A revision to the Arizona State Implementation Plan (SIP) for lead has been submitted to EPA by the Governor. The intended effect of the revision is to provide for the attainment and maintenance of the lead NAAQS in Arizona by October of 1982. EPA has reviewed the plan and is proposing to approve it, with the exception of the preconstruction permit provisions.

EPA invites interested persons to comment on the plan, the identified deficiencies, and/or the consistency of the plan with respect to the requirements of the Clean Air Act.

DATES: Comments may be submitted up to October 29, 1981.

ADDRESSES: Comments may be sent to: Regional Administrator, Environmental Protection Agency, Region IX, Attn: Air and Hazardous Materials Division, Air Programs Branch, State Implementation Plan Section (A–2–4), 215 Fremont Street, San Francisco, CA 94105.

Copies of the proposed plan are available for public inspection during normal business hours at the EPA, Region IX Office at the above address, and at the following locations:

Arizona Department of Health Services, 1740 West Adams Street, Phoenix, Arizona 85007;

Public Information Reference Unit, Room 2404 (EPA Library), 401 "M" Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Ron Leach, State Implementation Plan Section (A–2–4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105, (415) 556–9728.

SUPPLEMENTARY INFORMATION:

Background

Lead is emitted into the atmosphere by vehicles burning leaded fuel and by certain stationery sources. It enters the human body through ingestion and inhalation with consequent absorption into the blood stream and distribution to all body tissues. Clinical, epidemiological, and toxicological studies have demonstrated that exposure to lead adversely affects human health.

EPA's initial approach to controlling lead in the air was to limit the lead emissions from automobiles, the principle source of lead air emissions. Regulations for the phasedown of lead in the total gasoline pool were promulgated in 1973, and following litigation, modified and put into effect in 1976.

In 1975, the Natural Resources Defense Council brought suit against EPA to list lead under Section 108 of the Clean Air Act. Listing a pollutant under Section 108 mandates the development of air quality criteria, and establishment of a national air quality standard under Section 109. EPA listed lead on March 31, 1976, and proceeded to develop air quality criteria and the proposed standard.

On October 5, 1978 EPA promulgated primary and secondary NAAQS for lead. The standards were set at a level of 1.5 micrograms of lead per cubic meter or air ($\mu g\ Pb/m^3$), averaged over a calendar quarter. Section 110 of the Clean Air Act, as amended, requires states to submit implementation plans to EPA detailing how the NAAQS will be attained and maintained in their areas. EPA set forth the requirements of an approvable lead State Implementation Plan in 40 CFR Part 51 (43 FR 46264). These provisions require the submission of air quality data, emissions data, a control strategy, air quality modeling, and a demonstration that the standard will be attained within the time frame specified by the Clean Air Act.

Description of Proposed SIP Revision

On April 1 and September 26, 1980, the Governor of Arizona submitted revisions to the State Implementation Plan for lead. The Arizona Department of Health Services, Maricopa County, and Pima County each prepared a separate lead plan. The three plans together form the Arizona Lead State Implementation Plan revision, hereafter referred to as the plan. Although Maricopa County and Pima County have developed separate lead plans, the State maintains jurisdiction over certain types of sources, including copper smelters and all mobile sources. To achieve and maintain the lead NAAQS, the plan relies upon Federal regulations which mandate the reduction of lead in gasoline and improved fleet fuel economy.

The plan contains summaries of measured and projected air quality data, a rollback modeling analysis for Maricopa County, base-year and projected emission inventories for stationary sources, and base-year and projected emission inventories for mobile sources.

The air quality data is taken from total suspended particulate (TSP) monitoring stations located throughout the State. The data indicates that Maricopa County is the only area where exceedances of the standard have occurred since 1974. Maricopa County employs a modified rollback analysis to demonstrate attainment of the standard. This analysis uses the highest concentration (quarterly mean) recorded in 1977, and overall County emissions data (base-year 1977 and projected emissions for 1982) to show attainment of the standard. The highest concentration during 1977 ($3.89\ \mu g/m^3$) is used because this year corresponds to the base-year of the emission inventory. However, the highest concentration measured in 1977 is not the overall maximum level recorded since 1974. The maximum level recorded since 1974, or worst case, is $4.43\ \mu g/m^3$. EPA analysis of the worst case situation, however, also shows that the standard will be attained by the statutory deadline.

The emission inventories indicate that the major source of lead in the state is from mobile sources. Mobile source emissions are projected to decrease significantly by 1982. Also contributing to the emissions are seven primary copper smelters. These smelters are the only significant stationary sources of lead in Arizona.

In addition, the "Adopted Pima County Air Quality Control Revised Rules and Regulations" Volume I and various State regulations were submitted to EPA as SIP revisions on October 9, 1979 and April 1, 1980 respectively. These rules relate to preconstruction review of new stationary sources. Portions of the submittals were proposed for approval in the **Federal Register** on July 23, 1980 (45 FR 49113).

Discussion

EPA evaluated Arizona's plan by comparing it with the requirements for an approvable lead SIP, as set forth in 40 CFR Part 51, and with the EPA guideline document, "Supplementary Guidelines for Lead Implementation Plans." As a result of the evaluation, EPA has determined that the plan is consistent with EPA requirements and is proposing to approve Arizona's plan with the exceptions discussed below.

Arizona's plan does not fully satisfy the requirements of 40 CFR 51.18, "Review of New Sources and Modifications," because it lacks a permitting program for new stationary sources of lead that emit 5 tons/year or more. In accordance with Section 110(a)(2)(D) of the Clean Air Act (CAA) and 40 CFR 51.18, an approvable lead SIP revision must include a permitting program for regulating the "modification, construction, and operation of any stationary sources," to assure attainment and maintenance of the lead NAAQS. EPA has determined that the permitting program for lead sources cannot adequately demonstrate such attainment and maintenance unless it applies to all stationary sources of lead whose actual emissons will be 5 tons/yr or more. The source size limit is based on the definition of a point source of lead at 40 CFR 51.1(k). This limit is explained in the "Supplementary Guidelines for Lead Implementation Plans," pages 75–77.

The Pima County and State submittals of October 9, 1979 and April 1, 1980 were reviewed with respect to the new source review requirements for lead SIPs. Neither submittal is completely

approvable at this time. Arizona's regulations give the State authority to issue permits to all new and modified sources of lead that emit over 75 tons/yr of lead. Permits for many types of smaller sources may be issued by counties that have approved new source review permit programs. Pima County has an approved permit program that applies to all sources of lead emitting less than 75 tons/yr except primary copper smelters and oil refineries. (The State has exclusive jurisdiction over these two categories of lead sources.) New or modified copper smelters or oil refineries emitting less than 75 tons/yr of lead would not be subject to either set of permit requirements.

40 CFR 51.84, "Areas Around Significant Point Sources," provides that dispersion modeling be performed around certain types of stationary sources to calculate maximum lead air quality concentrations and to determine the locations of these concentrations for demonstration of attainment. Primary copper smelters are the only sources in Arizona which fall into one of the source categories specified in 40 CFR 51.84.

The plan does not contain a dispersion modeling analysis around primary copper smelters. However, EPA has used the results of previously performed sulfur dioxide (SO_2) dispersion modeling and applied a ratio method to demonstrate attainment of the lead NAAQS around the smelters. The Valley dispersion model was used to predict the maximum annual average SO_2 concentrations around all seven of the copper smelters. Source tests, conducted by EPA's National Enforcement Investigations Center, provided lead emission rates for the larger smelters. Emission rates for the smaller smelters were assumed, based on the rates for the larger smelters. The maximum annual lead concentrations were determined by taking a ratio of the lead to SO_2 emission rates, and multiplying this ratio by the predicted maximum SO_2 concentrations. Since the SO_2 modeling results are given in annual averages, and the lead standard is a quarterly average, an adjustment was necessary. A conservative estimate of the worst quarterly lead averages was obtained by doubling the annual averages. This doubling factor is based on observed ratios of measured annual averages to measured quarterly averages. The monitoring data was provided by the State of Arizona and shows low quarterly average lead concentrations around the smelters. The requirements of 40 CFR 51.84 are fulfilled because dispersion modeling has demonstrated attainment of the lead NAAQS around all seven of the copper smelters in Arizona.

EPA Proposed Actions

As discussed above, Arizona's plan meets EPA's requirements and is therefore proposed to be approved except as follows. The plan does not contain a permitting program for the review of new stationary sources of lead emissions, as required by 40 CFR 51.18. The plan is proposed for disapproval with respect to this requirement.

Public Comments

EPA has determined that Arizona's plan satisfies the public hearing requirements of 40 CFR 51.4. The State, prior to adopting its plan, held a public hearing after first providing a 30-day public notice. Included in the plan are two documents entitled "Clarification for the Arizona Lead State Implementation Plan Revision" and "A Revised Analysis of Lead Emissions and Ambient Air Concentrations in Pima County, Arizona." The documents provide technical support for the plan and do not alter its conclusions or strategies. Since the documents are non-regulatory in nature and will not affect the program for attainment and maintenance of the NAAQS, no public hearing was required prior to their submittal (44 FR 20373, April 14, 1979). Arizona derives its authority to adopt and enforce ambient air quality standards from Section 36-1807 (A) and (C) of the Arizona Revised Statutes.

Under Section 110 of the Clean Air Act, and 40 CFR Part 51, the Administrator is required to approve or disapprove material submitted as revisions to the SIP. The Regional Administrator hereby issues this notice setting forth these revisions as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office. Comments received will be available for public inspection at the EPA Region IX Office and at the locations listed in the ADDRESSES Section of this notice. The Administrator's decision to approve or disapprove the proposed revisions will be based upon the comments received and on a determination of whether the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans have been met.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The SIP approvals announced today are not major because they only approve state actions. The disapprovals are also not major because they preserve the status quo.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

(Secs. 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410 and 7610(a)))

Dated: July 10, 1981.

Frank M. Covington,

Acting Regional Administrator.

Certification of No Significant Impact for a Substantial Number of Small Entities

Action: Proposed approval and disapproval of Arizona State Implementation Plan for Lead

Pursuant to the provisions of 5 U.S.C. section 605(b) I hereby certify that the attached proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities. I have certified that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant impact 46 FR 8709 (January 27, 1981). Major portions of the attached rule are proposed SIP approvals under Sections 110 and 172 within the meaning of the January 27th certification. The approvals will only approve state actions. They will impose no new requirements.

The proposed disapproval will also have no significant impact. The disapproval will preserve the status quo.

Dated: September 18, 1981.

Ann M. Gorsuch,

Administrator.

[FR Doc. 81-28159 Filed 9-28-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 123

[SW-FRL—1943-4]

Wisconsin Application for Interim Authorization Phase I Hazardous Waste Management Program; Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Hearing and Public Comment Period.

SUMMARY: EPA regulations to protect human health and the environment from the improper management of hazardous waste were published in the Federal Register on May 19, 1980, (45 FR 33063). These regulations include provisions for authorization of State programs to operate in lieu of the Federal program. Today EPA is announcing the availability for public review of the Wisconsin application for Phase I Interim Authorization, inviting public comment, and giving notice of public hearing to be held on the application.

DATE: Comments on the Wisconsin Interim Authorization application must be received by November 10, 1981.

PUBLIC HEARING: EPA will conduct a public hearing on the Wisconsin Interim Authorization application at 2:00 p.m. on October 30, 1981. EPA reserves the right to cancel the public hearing if significant public interest in a hearing is not expressed. The State of Wisconsin will participate in the public hearing.

ADDRESSES: The Public hearing will be held at 2:00 p.m. on October 30, 1981, at: General Executive Facility (GEF) III, Room 11, 125 South Webster Street, Madison, Wisconsin.

Copies of the Wisconsin Interim Authorization application are available at the following addresses for inspection and copying by the public during normal business hours:

(1) Wisconsin Department of Natural Resources, Bureau of Solid Waste, 125 South Webster Street, Madison, Wisconsin, Telephone (608) 267–7564 for other locations within the State;
(2) U.S. Environmental Protection Agency, Region V, Air and Hazardous Materials Division, Waste Management Branch, 111 West Jackson, Chicago, Illinois 60604;
(3) U.S. Environmental Protection Agency, Library, Room 2404, 401 M Street, S.W., Washington, D.C. 20460.

Written comments and notification of intent to provide oral comments at the hearing and requests for transcripts of the hearing should be sent to: Judy Kerfcher, Chief, Regulatory Analysis and Information Section, Waste Management Branch (5AHWM), U.S. Enviromental Protection Agency, Region V, 111 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Judith Stone, Regulatory Analysis & Information Section, Waste Management Branch (5AHWM), U.S. Environmental Protection Agency, 111 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–4179.

SUPPLEMENTARY INFORMATION: On May 19, 1980, (45 FR 33063), pursuant to the requirements of sections 3001 through 3006 of the Resource Conservation and Recovery Act of 1976, (Act), as amended, EPA promulgated Phase I of its regulations to protect human health and the environment from the improper management of hazardous waste. Section 3006 of the Act provides for the Authorization of a State to administer and enforce a hazardous waste management program in lieu of the Federal program. EPA Phase I regulations established, among other things: the initial identification and listing of hazardous wastes; the standards applicable to generators and transporters of hazardous waste, including a manifest system; and the "interim status" standards applicable to existing hazardous waste management facilities before they receive permits. The regulations also provide for two different types of EPA approval of State programs: (1) Interim Authorization which will become effective in phases and which may extend for only 24 months after the final component of Phase II of the Federal program has become effective and (2) Final Authorization. Although for Final Authorization the State must have a program which is "equivalent to" and "consistent with" the full Federal program, during Interim Authorization States need programs that are only "substantially equivalent" to the Federal program.

Any State may submit evidence of a hazardous waste program existing pursuant to State law and may request Interim Authorization to administer and enforce such a program.

EPA shall grant Interim Authorization if the evidence submitted by a State demonstrates that the State program is substantially equivalent to the Federal program.

On August 19, 1981, the State of Wisconsin submitted its complete application for Phase I Interim Authorization of its hazardous waste management program. This notice solicits public comments on the State of Wisconsin's application and its hazardous waste management program. The elements of the Federal program are listed in the May 19, 1980, **Federal Register.** A full description of the requirements and procedures for Interim Authorization of a State hazardous waste program are listed in Part 123 Subpart F (45 FR 33479), and as amended January 26, 1981, (46 FR 8298). To receive Interim Authorization a State's hazardous waste management program must be subtantially equivalent to the Federal program and must meet the requirements in § 123.128. Copies of the State submittal are available for public inspection and comment as noted above. A public hearing is to be held on the submittal, unless significant public interest is not expressed, also as noted above.

Conduct of Hearing

The hearing is intended to provide an opportunity for interested persons to present their views and submit information for consideration by EPA in the decision whether to grant Wisconsin Interim Authorization for Phase I of the RCRA program.

A panel of EPA employees involved in relevant aspects of the decision will be present to receive the testimony. The hearing will be informally structured. Representatives from the State of Wisconsin will testify first and present a short overview of the State program. Other commenters will then be called in the order in which their requests were received by EPA.

As time allows, persons who did not sign up in advance but who wish to comment on the State's application for Phase I Interim Authorization will also be given an opportunity to testify. As a general rule, in order to insure maximum participation and allotment of adequate time for all speakers, participants should limit the length of their statements to 10 minutes. The public hearing will be followed, as time permits, by a question and answer session during which participants may pose questions to members of the panel.

Preparation of Transcripts

A transcript of the comments received at the hearing will be prepared. To insure accurate transcription, participants should provide written copies of their statements to the hearing chairperson. Transcripts will be available at cost upon request from the address listed above approximately three days after the hearing.

Under Executive Order 12291 (Order), EPA must judge whether an action is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. Today's action is not a major rule, since it merely announces receipt and availability of the documents submitted by the State of Wisconsin and the public comment period. Rulemaking action on these documents will be detailed in a separate **Federal Register** notice.

Valdas V. Adamkus,

Acting Regional Administrator.

[FR Doc. 81–28162 Filed 9–28–81; 8:45 am]

BILLING CODE 6560–38–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA 6143]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Arizona, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 287–0270, Federal Insurance Administration, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4 (a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605 (b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prescribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arizona	Prescott Valley (city), Yavapai County	Aqua Fria River	Intersection of Mingus Circle and Mountain View Drive	*4890
			Intersection of Hill Drive and Mountain View Drive	*4912
		Navajo Drive Wash	Eastern corner of intersection of Towago Drive and Navajo Drive	*4876
	Maps available for inspection at Town Planner's Office, Town Hall, Yavapai Road, Prescott Valley, Arizona.			
	Send comments to the Honorable Raymond Sandberg, P.O. Box 5456, Prescott Valley, Arizona.			
California	Hercules (city), Contra Costa County	Refugio Creek	100 feet upstream from centerline of Southern Pacific Railroad.	*9
			Confluence with West Branch Refugio Creek	*18
			100 feet upstream from centerline of C Street	*61
			100 feet upstream from centerline of Redwood Road	*175
		West Branch Refugio Creek	100 feet downstream from centerline of San Pablo Avenue.	*32
			125 feet upstream from centerline of Interstate Highway 80.	*52
		East Branch Refugio Creek	350 feet downstream from centerline of Interstate Highway 80.	*30
			150 feet upstream from Interstate Highway 80 off ramp to Willow Avenue.	*38
		Pinole Creek	800 feet west from intersection of Hercules Avenue and Baccus Avenue.	*9
	Maps available for inspection at City Hall, 555 Railroad Avenue, Hercules, California.			
	Send comments to the Honorable Lynn Judnich, P.O. Box 156, Hercules, California 94547.			
California	Roseville (city), Placer County	Antelope Creek	150 feet upstream from center of the Southern Pacific Railroad.	*161
		Cirby Creek	175 feet upstream from center of Oak Ridge Drive	*139
		Dry Creek	50 feet upstream from center of Atkinson Street	*120
			Intersection of Dry Creek and center of Folsom Road	*145
		Linda Creek	100 feet upstream from center of Rocky Ridge Drive	*153
		Miners Ravine	100 feet upstream from center of Interstate Highway 80.	*161
		Secret Ravine	Intersection of Secret Ravine and center of Private Road.	*169
		South Branch Pleasant Grove Creek.	120 feet upstream from center of Diamond Oaks Road	*127
		Strap Ravine	100 feet upstream from center of McLaren Drive	*155
	Maps available for inspection at Department of Public Works, 316 Vernon Street, Roseville, California.			
	Send comments to the Honorable Harry Crabb, Jr., 316 Vernon Street, Roseville, California 95678.			

Proposed Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
California	Tehachpi (city), Kern County	Antelope Creek	At the intersection of Antelope Creek and the downstream corporate limits.	*3905
			35 feet upstream from the center of the State Highway 202 (West Tehachapi Boulevard) crossing of Antelope Creek.	*3950
			50 feet west of the intersection of South Mill Street and West C Street.	*3979
		Blackburn Creek	At the intersection of Blackburn Creek and the center of North Mill Street.	*3946
			At the intersection of North Davis Street and East J Street.	*3968
			At the intersection of Anita Drive and South Dennison Road.	*4026
	Maps available for inspection at City Clerk's Office, 129 East F Street, Tehachapi, California.			
	Send comments to the Honorable Larry Redelsberger, P.O. Bin 668, Tehachapi, California 93561.			
Florida	City of Brooksville, Hernando County	Ponding Area 1	Approximately 300 feet south of Piccadilly Street and Lakeside Drive intersection.	*77
		Ponding Area 2	Approximately 450 feet northwest of Howell Avenue and Summit Drive intersection.	*99
		Ponding Area 3	Approximately 450 feet north and 75 feet east of Kelly Street and Bell Avenue intersection.	*97
		Ponding Area 4	Just east of intersection of Seaboard Coast Line Railroad and Oak Dale Avenue extended.	*110
		Ponding Area 5	Intersection of Palm Avenue and Lamar Avenue	*100
		Ponding Area 6	Approximately 300 feet east of Main Street and Russell Street intersection.	*129
		Ponding Area 7	Approximately 300 feet north of U.S. Route 41 and Summit Road intersection.	*112
		Ponding Area 8	Just east of U.S. Route 41 and I Street intersection	*113
		Ponding Area 9	Approximately 225 feet east of intersection of Candlelight Boulevard and corporate limits.	*78
		Ponding Area 10	Just northwest of U.S. Route 41 and State Road 577 intersection.	*89
		Ponding Area 11	Approximately 450 feet northeast of U.S. Route 41 and State Road 577 intersection along U.S. Route 41.	*90
		Ponding Area 12	Just northwest of U.S. Route 41 and State Road 577 intersection.	*90
	Maps available for inspection at City Hall, 26 South Brooksville Avenue, Brooksville, Florida 33512			
	Send comments to Mayor Franklin F. Emerson or Ms. Margaret C. Willard, City Manager, City Hall, 26 South Brooksville Avenue, Brooksville, Florida 33512.			
Georgia	Unincorporated Areas of Lowndes County	Withlacoochee River	Approximately 1,500' upstream of U.S. Highway 84 and 221.	*114
			Just downstream of Interstate Highway 75	*130
			Approximately 600 feet downstream of U.S. Highway 41 and State Highway 7.	*133
			Just downstream of State Road	*139
		Little River	Approximately 200 feet downstream of State Highway 94.	*128
		Mud Swamp Creek	Just downstream of Johnson Road	*156
			Just upstream of Southern Railway	*167
			Just downstream of State Highway 31	*171
			Just upstream of Interstate Highway 75	*183
		Airport Tributary	Just downstream of Copeland Road	*174
		Dukes Bay Drainage Canal	Just downstream of Southern Railway Spur	*168
		Knights Creek	Just upstream of County Road 19	*188
			Just upstream of U.S. Highway 221 (State Highway) 31.	*196
	Maps available for inspection at Lowndes County Courthouse, Patterson Street, Valdosta, Georgia 31601.			
	Send comments to Mr. Fred Deloach, Chairman of Lowndes County Board of Commission of Mr. Bulford McRae, County Manager, Lowndes County Courthouse, or P.O. Box 1349, Valdosta, Georgia 31601.			
Georgia	Unincorporated Areas of Tift County	Little River	Just upstream of U.S. Highway 319	*249
			Just downstream of U.S. Highway 82 (State Highway 50).	*262
			Just upstream Seaboard Coast Line Railroad	*268
		New River	Just upstream of County Road 92	*314
			Just downstream of Ferry Lake Road (County Road 72).	*322
		Channel A	Just downstream of Bill Bowen Road	*316
			Just upstream of Old Ocilla Road (FAS 1981)	*337
		Gum Creek	Just upstream of State Highway 125	*310
			Just upstream of Vernon Road	*325
	Maps available for inspection at Tift County Administration Building, 225 Tift Avenue, Tifton, Georgia 31793.			
	Send comments to Mr. Charles Kent, Chairman of Tift County's Board of Commission or Mr. Ronald Brownlee, Vice Chairman, Administration Building, 225 Tift Avenue, Tifton, Georgia 31793.			
Nevada	Lincoln County (unincorporated areas)	White River (near Alamo)	Intersection of river and downstream edge of lower road crossing.	*3,450
		White River (near Ash Springs)	Area west of U.S. Highway 93 at the Ash Springs crossing.	*3,590

Proposed Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		White River (near Hiko)	Intersection of river and upstream edge of lower road crossing.	*3,844
		Meadow Valley Wash (near Caliente).	Intersection of wash and center of Union Pacific Railroad (crossing just north of Caliente).	*4,433
		Meadow Valley Wash, (near Panaca).	50 feet upstream from center of Nevada State Highway Route 25.	*4,725
		Meadow Valley Wash (near Ursine).	Upstream limit of detailed study	*5,583
		Clover Creek	Upstream limit of detailed study	*4,434
		Antelope Canyon Wash	Upstream limit of detailed study	*4,599
		Cathedral Gorge Wash	At confluence with Meadow Valley Wash (just upstream of Union Pacific Railroad).	*4,734
		Dry Canyon Wash	Upstream limit of detailed study	*5,698
		Dry Wash Runoff	50 feet upstream from center of Union Pacific Railroad	*4,370
		Hiko Wash	20 feet upstream from center of State Highway 38	*3,872
Maps available for inspection at County Surveyors Office, Lincoln County Courthouse, Pioche, Nevada.				
Send comments to the Honorable Mile Fogliani, Lincoln County Courthouse, Pioche, Nevada 89043.				
North Carolina	City of Goldsboro Wayne County	Neuse River	Just upstream of State Road 1915	*71
			Just upstream of U.S. Highways 117 and 13 Sound Bound Lane.	*73
		Little River	Approximately 1,500 feet upstream State Highway 581	*74
			Just downstream of U.S. Highway 70	*75
		Big Ditch	Just upstream of Seaboard Coastline Railroad (near George Street).	*76
			Just downstream of Park Avenue	*84
		Stoney Creek	Just upstream of Slocumb Street	*75
			Just upstream of Wayne Memorial Drive (State Road 1556).	*93
		Richland Creek	Just downstream of Buckley Boulevard	*101
		Billy Budd Creek	Just upstream of Beast Road (State Road 1565)	*100
			Just upstream of State Road 1567	*105
		Reedy Branch	Just upstream of State Road 1003	*104
		Howell's Branch	Just upstream of Wayne Memorial Drive (State Road 1556).	*93
			Just downstream of State Road 1523 (Pateltown Road)	*102
Maps available for inspection at City Hall, Goldsboro, North Carolina 27530.				
Send comments to Mayor Hal Plonk or Mr. Ken Collings, City Manager, City Hall, P.O. Drawer A, Goldsboro, North Carolina 27530				
North Carolina	City of Kinston, Lenoir County	Neuse River	Just downstream of Southern Railway	*34
			Just downstream of U.S. Highway 70-258 bypass	*38
		Southwest Creek	Approximately 200 feet downstream of U.S. Highway 70.	*36
			Just upstream of N.C. Highway 58 (Trenton Highway)	*47
		Briery Run	Just upstream of N.C. Highway 58	*53
			Just downstream of Airport Road (SR 1578)	*59
			Just upstream of Rouse Road (SR 1572)	*67
		Taylors Branch	Just downstream of Rouse Road (SR 1572)	*70
		Jerico Run	Just downstream of Cunningham Road (SR 1745)	*49
		Jerico Run Tributary	Just upstream of Greenville Highway (NC 55)	*54
		Adkin Branch	Just downstream of N.C. Highway 11 (Greenville Highway).	*44
			Just downstream of Highland Avenue	*49
			Just upstream of U.S. Highway 58 (Queen Street)	*55
			Just downstream of Crawford Road	*75
		Neuse River Tributary	Just downstream of U.S. Highway 70	*40
Maps available for inspection at the Office of Planning and Research, City Hall, Kinston, North Carolina 28501				
Send comments to Mayor Simon Sitterson, Jr., City Hall, P.O. Drawer 969, or Mr. Robert Clark, Director of Planning and Research, City Hall, P.O. Box 339, Kinston, North Carolina 28501				
North Carolina	City of Wilson, Wilson County	Toisnot Swamp	Just upstream of U.S. 301 bypass	*97
			Just downstream of Corbett Avenue	*103
		Hog Island Tributary	At State Road 1327 (flooding effects in this area is backwater from Toisnot Swamp).	*100
		Toisnot Swamp Tributary	Just upstream of Tilghman Road	*108
		Hominy Swamp	Just upstream of Black Creek Road (St. Rd. 1606)	*95
			Just upstream of Raleigh Drive	*112
			Just downstream of Lakeside Drive	*118
			Just upstream of Airport Road (St. Rd. 1320)	*135
		Little Hominy Swamp	Just upstream of Forest Hills Rd.	*124
		Contentnea Creek	Just downstream of Seaboard Coast Line Railroad	*87
			Just downstream of Downing Street	*101
		Wiggins Mill Tributary	Just upstream of Farm Road	*114
		Bloomery Swamp	At Tarboro Street (NC 42) (backwater effects from Contentnea Creek).	*102
Maps available for inspection at the Office of the Director of Planning, City Hall, 112 North Goldsboro Street, Wilson, North Carolina.				
Send comments to Mayor Ralph El Ramsey or Mr. Jim Bradshaw, Planning Department Director, City Hall, P.O. Box 10, Wilson, North Carolina 27893.				
Oregon	Cave Junction (city), Josephine County	East Fork Illinois River	250 feet downstream from center of Redwood Highway (U.S. Highway 199).	*1,292
Maps available for inspection at City Hall, 222 Lister, Cave Junction, Oregon.				
Send comments to the Honorable Irvin R. Whiting, P.O. Box F, Cave Junction, Oregon 97523.				
Oregon	Gaston (city), Washington County	Tualatin River	Approximately 500 feet east along Main Street from its intersection with Tualatin Valley Highway.	*174
Maps available for inspection at City Hall, 116 Front Street, Gaston, Oregon.				
Send comments to the Honorable Robert Terrill, P.O. Box 128, Gaston, Oregon 97119.				

Proposed Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Oregon	Lafayette (city), Yamhill County	Yamhill River	Approximately 800 feet southwest along Washington Street (extended) from its intersection with State Highway 99W.	*109
	Maps available for inspection at City Hall, Lafayette, Oregon.			
	Send comments to the Honorable Lotis Hanks, P.O. Box 55, Lafayette, Oregon 97126.			
Oregon	Millersburg (city), Benton County	Willamette River	At intersection of Murder Creek and the Burlington Northern Railroad.	*198
		Truax Creek	50 feet upstream from center of Salem Road	*205
	Maps available for inspection at City Hall, 4310 N.E. Woods Road, Millersburg, Oregon.			
	Send comments to the Honorable Clayton Wood, 4310 N.E. Woods Road, Millersburg, Oregon 97321.			
Oregon	Multnomah County (unincorporated areas)	Columbia River	Interstate Highway 5 over the channel	*28
			Confluence with Sandy River	*32
		Willamette River	Fielding Road	*33
		Multnomah Channel	Approximately 100 feet northeast along Johnson Mill Road from its intersection with Burlington Northern Railroad.	*27
		Multnomah Drainage District No. 1	Intersection of Marx Drive and Holman Street	*17
			Approximately 500 feet north of the intersection of 185th Drive and Union Pacific Railroad.	*17
		Fairview Creek	Intersection of Stark Street and 208th Avenue	*244
		Sandy River	Underpass where Columbia River Highway (I-84) crosses Crown Point Highway.	*32
			Downstream side of Viking Bridge over the channel	*50
		Unnamed Tributary to Rock Creek	Downstream side of Kaiser Road over the channel	*211
		Johnson Creek	Intersection of Harney Street and 82nd Avenue	*196
			Intersection of Mall Street and 141st Avenue	*210
			Intersection of Raymond Street and 122nd Avenue	*211
			Downstream side of 267th Avenue over the channel	*409
	Maps available for inspection at Zoning & Planning Office, 2115 SE Morrison, Portland, Oregon.			
	Send comments to the Honorable Donald Clark, 1021 SW 4th, Room 136, Portland, Oregon 97204.			
Oregon	Philomath (city), Benton County	Marys River	300 feet south along centerline of 11th (E) Street from its intersection with Applegate (south) Street.	*266
		Newton Creek	100 feet downstream of intersection of Applegate Street and Newton Creek.	*262
	Maps available for inspection at City Hall, Philomath, Oregon.			
	Send comments to the Honorable Jan Tunison, P.O. Box 549, Philomath, Oregon 97370.			
Texas	City of Lampasas, Lampasas County	Sulphur Creek	Just downstream of 4th Street	*1,013
			Just downstream of Key Avenue	*1,020
			Downstream of Naruna Road	*1,034
		Gooch Branch	Just upstream of U.S. Highway 190	*1,016
		Gibson Branch	Just downstream of 3rd Street	*1,011
			Just upstream of Avenue H	*1,020
		Burleson Creek	Just downstream of Campbell Road	*1,022
			Just downstream of Key Avenue	*1,037
		Cemetery Creek	Just upstream of Hackberry Street	*1,012
		Stream LM-1	Just downstream of Howe Street	*1,036
			Just downstream of Dam	*1,045
			Upstream of Dam	*1,077
	Maps available for inspection at City Hall, 302 East Third Street, Lampasas, Texas 76550.			
	Send comments to Mayor Henry V. Campbell, Jr. or Mr. Norris Sneed, City Administrator, City Hall, P.O. Drawer 666, Lampasas, Texas 76550.			
Texas	City of Temple, Bellcounty	Leon River	Just downstream of Atchison Topeka and Santa Fe Railway.	*490
			Approximately 500 feet downstream of State Highway 317.	*499
		Fryers Creek	Just upstream of Waters Dairy Road	*590
			Just upstream of Fryers Creek Circle South	*635
			Just upstream of Avenue T	*659
			Just upstream of Avenue P	*670
		Fryers Creek Tributary 1	Just upstream of Corporate Limits (Southern)	*577
		Bird Creek	Just downstream of Shallow Ford Road	*487
			Just upstream of Briar Cliff Road	*534
			Approximately 150 feet downstream of Interstate Highway 35.	*594
			Just downstream of State Highway 36	*661
		Bird Creek Tributary 1	Just downstream of Hemlock Boulevard	*538
			Approximately 120 feet upstream of Cottonwood Lane	*617
		Pepper Creek	Just downstream of Atchison Topeka and Santa Fe Railway.	*490
			Just downstream of FM 2305 (Adams Avenue)	*566
			Just upstream of State Highway 36	*600
		Pepper Creek Tributary 1	Approximately 120 feet upstream of State Highway Loop 363.	*600
			Just upstream of Dam	*655
		Knob Creek	Just downstream of Atchison Topeka and Santa Fe Railway (Downstream Crossing).	*599

Proposed Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of 30th Street	*633
			Just upstream of Missouri Kansas Texas Railroad	*669
		Little Elm Creek	Approximately 150 feet upstream of Dairy Road	*562
			Approximately 100 feet downstream of Zenith Avenue	*593
			Just upstream of Gun Club Road	*609
			Just upstream of Missouri Kansas Texas Railroad	*642
		Little Elm Creek Tributary 1	Just downstream of Tower Road	*595
			Just downstream of 34th Street	*636
			Just upstream of 16th Street	*677
		Williamson Creek	Just upstream of State Highway 53	*597
			Just downstream of French Street	*622
			Just upstream of Hoover Street	*661
			Just upstream of Walker Avenue	*698
		Williamson Creek Tributary	Just upstream of Missouri Kansas Texas Railroad	*667
			Just upstream of 7th Street	*707
		Little Elm Creek Tributary 2	Just downstream of Center Street	*711
	Maps available for inspection at Temple Municipal Building, Main and Adams Streets, Temple, Texas 76501.			
	Send comments to Mayor J. F. Sammons or Mr. Barney L. Knight, City Manager, Municipal Building, Main and Adams Streets, Temple, Texas 76501.			
Texas	City of Watauga, Tarrant County	Singing Hills Creek	Just upstream of Mackneal Drive	*584
			Just downstream of Chapman Road	*616
			Just upstream of Starnes Road	*654
		Bunker Hill Creek	Just upstream of Maurie Drive	*586
			Just upstream of Chapman Road	*613
			Just upstream of Prewett Road	*637
		Whites Branch	Just upstream of Watauga Smithfield Road	*580
	Maps available for inspection at City Hall, 7107 Whitley Road, Watauga, Texas 76148.			
	Send comments to Mayor Virgil R. Anthony Sr. or H. R. Macomber, City Hall, 7107 Whitley Road, Watauga, Texas 76148.			
Washington	Hamilton (town), Skagit County	Skagit River	Intersection of Baker Street and Ashford Street	*100
			Intersection of Washington Street and Noble Avenue	*102
	Maps available for inspection at Town Hall, Noble Street, Hamilton, Washington.			
	Send comments to the Honorable Tom Hooper, P.O. Box 403, Hamilton, Washington 98255.			

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

Issued: September 15, 1981.

John Dickey,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 81-28008 Filed 9-28-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 6147]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Connecticut, et al.

AGENCY: Federal Emergeancy Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chapell, National Flood Insurance Program, (202) 287–0270, Federal Insurance Administration, Washington, D.C. 20472

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A

flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prescribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Connecticut	Colchester, Borough, New London County	Judd Brook	Downstream Corporate Limits	*411
			State Route 16 (Upstream side)	*424
			Norwich Avenue (Downstream side)	*455
			Approximately 830' upstream of Norwich Avenue	*470
			Upstream Corporate Limits	*482
Maps available for inspection at the home of the Borough Clerk, Deborah Golden, Boretz Road, Colchester, Connecticut.				
Send all comments to the Honorable Beverly Park, Borough Warden, Box 197, Colchester, Connecticut 06415.				
Connecticut	Colchester, Town, New London County	Meadow Brook	Confluence with Jersey River	*244
			Downstream of Mill Hill Road	*260
			Approximately 3,800' upstream of Mill Hill Road	*276
			Approximately 4,630' upstream of Mill Hill Road	*296
			Approximately 540' downstream of Levy Road	*315
			Upstream of Levy Road	*328
		Jeremy River	Approximately 2,150' downstream of State Route 2	*236
			Upstream of State Route 2	*245
			Upstream of Hartford Road	*248
		Judd Brook	Approximately 3,155' downstream of Miller Road	*344
			Approximately 670's downstream of Miller Road	*356
			Upstream of Miller Road	*369
			Downstream of State Route 85	*394
			Downstream Corporate Limits of the Borough of Colchester, Connecticut.	*411
			Upstream Corporate Limits of the Borough of Colchester, Connecticut.	*482
			Approximately 2,250' upstream of Norwich Avenue	*493
Maps available for inepection at the Office of the Town Clerk, Town Office Building, Colchester, Connecticut.				
Send comments to the Honorable John David Cohen, Chairman of the Town of Colchester Board of Selectmen, Town Office Building, Colchester, Connecticut 06415				
Connecticut	Litchfield, Town Litchfield County	Naugatuck River	Downstream Corporate Limits	*496
			Upstream State Route 118	*509
			Upstream Corporate Limits	*515
		East Branch Shepaug River	Upstream Coxes Dam	*916
			Upstream Private Road	*922
			Approximately 830' upstream of Dam	*950
			Upstream of Blue Swamp Road	*984
		Bantam River	Confluence with Bantam Lake	*904
			Upstream Private Drive	*934
			Approximately 1,000' upstream of U.S. Route 202	*962
		Bantam Lake	Entire shoreline within community	*904
Maps available for inspection at the First Selectman's Office and the Office of the Zoning Enforcement Office, Litchfield Town Hall, Litchfield, Connecticut.				
Send comments to the Honorable Theodore Litwin, First Selectman of the Town of Litchfield, Town Hall, West Street, Litchfield, Connecticut 06759.				
Connecticut	Stafford, Town, Tolland County	Furnace Brook	Downstream Corporate Limits	*522
			Approximately 2,700' upstream of Corporate Limits	*540
			Orcutville Road (upstream)	*550
			Leonard Road and Riverside Dam (upstream)	*584
			Pinney School Road (upstream)	*592
			Hydeville Road (upstream)	*621
			State Route 19—(East Street) (first crossing, upstream).	*635
			State Route 19—(East Street) (second crossing, upstream).	*661
			Approximately 1,010' upstream of Upper Road	*683
		Middle River	Downstream Corporate Limits	*505
			State Route 190—(West Stafford Road) (upstream)	*513
			Approximately 100' upstream of Central Vermont Railway.	*526
		Edson Brook	Confluence with Middle Brook	*505
			Cooper Lane (Upstream)	*511
			Machine Shop Road	*520
			Confluence with Crystal Lake Brook	*535
		Crystal Lake Brook	Confluence with Edson Brook	*535
			2nd Dam (upstream)—approximately 1,930' upstream of confluence with Edson Brook.	*577
			State Route 30—(Crystal Lake Road) (upstream)	*587
			Approximately 2,700' upstream of State Route 30—(Crystal Lake Road).	*612
			Approximately 2,280' upstream of Handel Road	*622
Maps available for inspection at the Office of the Zoning Officer, 1 Memorial Town Hall, Stafford Springs, Connecticut.				
Send all comments to the Honorable John Julian, First Selectman of the Town of Stafford, P.O. Box 2, Stafford Springs, Connecticut 06076.				

Proposed Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
Connecticut	Stafford Springs, Borough, Tolland County	Willimantic River	Corporate Limits	*452
			Fitler Corporation Bridge (upstream side)	*463
			Confluence of Furnace Brook and Middle River	*469
		Furnace Brook	Confluence with Willimantic River	*469
			Cyril Johnson Dam (upstream side)	*495
			Corporate Limits	**522
		Middle River	Confluence with Willimantic River	*469
			West Street (downstream side)	*492
			Corporate Limits	*505

Maps available for inspection at the Stafford Springs Zoning Office, 1 Memorial Town Hall, Stafford Springs, Connecticut.

Send comments to Honorable Norman Millard, Borough Warden of Stafford Springs, P.O. Box 91, Stafford Springs, Connecticut 06076.

Connecticut	Willington, Town, Tolland County	Willimantic River	Downstream Corporate Limits	*330
			Directly upstream of Depot Road	*352
			Approximately 150' upstream of U.S. Route 44	*372
			At confluence of Roaring Brook	*401
			100' upstream of Central Vermont Railway (2nd most upstream crossing).	*427
			Approximately 640' upstream Central Vermont Railway (most upstream crossing).	*440
			Upstream Corporate Limits	*452

Maps available for inspection at the Willington Town Clerk's Office, Town Hall, West Willington, Connecticut.

Send comments to the Honorable Andrew Popko, First Selectman of the Town of Willington, P.O. Box 34, West Willington, Connecticut 06279

Connecticut	Wilton, Town, Fairfield County	Norwalk River	Downstream Corporate Limits	*123
			Upstream P & E Bridge	*141
			Upstream Wolfpit Road	*158
			Confluence of Comstock Brook	*186
			Upstream State Route 7 (First Crossing)	*208
			Upstream Cannon Road	*226
			Upstream Seely Road	*245
			Downstream Old Mill Road	*271
			Approximately 3,400' upstream of Old Mill Road	*303
			Approximately 420' downstream of Old U.S. Route 7	*334
			Upstream Corporate Limits	*344
		Comstock Brook	Confluence with Norwalk River	*186
			Upstream of Lovers Lane	*231
			Upstram of Fitzgerald Road	*263
			Downstream of Middlebrook Farm Road	*310
			Upstream of Nodhill Road	*344
			Approximately 3,600' upstream of Nodhill Road	*363
			Approximately 7,150' upstream of Nodhill Road	*425
		West Branch Saugatuck River	Downstream Corporate Limits	*91
			First Footbridge (Downstream)	*109
			Downstream Abandoned Bridge	*130
			Upstream State Route 53	*145
			Upstream Corporate Limits	*159
			Approximately 200' upstream of upstream Corporate Limits.	*161
		East Branch Silvermine River	Downstream Corporate Limits	*489
			Upstream Bald Hill Road	*516
			Downstream Snowberry Lane	*547
			Upstream Corporate Limits	*561

Maps available for inspection at the Wilton Town Clerk's Office, Wilton, Connecticut.

Send comments to Rosemary Verrilli, First Selectwoman of Wilton, Wilton, Connecticut 06897.

Massachusetts	Belmont, Town, Middlesex County	Wellington Brook	Downstream Boston and Maine Railroad bridge	*9
			Upstream Private Drive	*21
			Downstream Common Street	*23
		Little River (Alewife Brook)	Upstream of Corporate Limits	*8

Maps available for inspection at the Office of the Belmont Town Engineer, Town Hall, Belmont, Massachusetts.

Send comments to the Honorable Walter Flewelling, Chairman of the Town of Belmont Board of Selectmen, P.O. Box 56, Belmont, Massachusetts 02178.

Massachusetts	Douglas, Town, Worcester County	Mumford River	Downstream Corporate Limits	*321
			Upstream of North Street	*341
			Downstream of Cook Street	*364
			Upstream of Mechanic Street	*376
			Upstream Corporate Limits	*389
		Southwick Brook	Confluence with Mumford River	*377
			Upstream of Hunt Pond Dam	*407
			Upstream of Corporate Limits	*425

Maps available for inspection at the Douglas Town Hall, Main Street, Douglas, Massachusetts.

Send comments to the Honorable Paul Boutsette, Chairman of the Douglas Board of Selectmen, Town Hall, Main Street, Douglas, Massachusetts 01516.

Massachusetts	Lee, Town, Berkshire County	Housatonic River	Downstream Corporate Limits	*834
			Willow Mill Dam (Upstream)	*847
			Meadow Street (Upstream)	*851
			Approximately 3,000' downstream of confluence with Goose Pond Brook.	*861
			Confluence with Goose Pond Brook	*870

Proposed Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Interstate 90 (Upstream)	*879
			Conrail Bridge (Upstream)	*889
			Columbia Mill Dam (Downstream)	*903
			Columbia Mill Dam (Upstream)	*916
			Confluence of Washington Mountain Brook	*925
			Valley Mill Dam (Upstream)	*955
			Upstream Corporate Limits	*958
		Goose Pond Brook	Confluence with Housatonic River	*870
			Footbridge (Downstream)	*894
			First Private Drive (Downstream)	*915
			Second Private Drive (Downstream)	*963
			Approximately 300' upstream of Second Private Drive	*971
		Barnes Brook	Confluence with Housatonic River	*880
			Private Drive (Upstream)	*885
			Maple Street (Upstream)	*900
			Greylock Street (Upstream)	*916
			Approximtely 2,500' upstream of Greylock Street	*944
			East Street (Upstream)	*970
		Mad River	Approximately 1,200' upstream of confluence with Hop Brook.	*855
			Approximately 2,800' upstream of confluence with Hop Brook.	*878
		Hop Brook	Confluence with Housatonic River	*855
			Corporate Limits	*855

Maps available for inspection at the Lee Town Hall, Main Street, Lee, Massachusetts.

Send all comments to the Honorable John DeVareness, Chairman of the Town of Lee Board of Selectmen, Town Hall, Lee, Massachusetts 01238.

Massachusetts	Leominster, City, Worcester County	North Nashua River	Downstream Corporate Limits	*279
			Confluence of Fall Brook	*286
			Mechanic Street (upstream)	*293
			Confluence of Monoosnoc Brook	*299
			State Route 2 (downstream)	*306
			Upstream Corporate Limits	*332
		Monoosnoc Brook	Confluence with North Nashua River	*299
			Whitney Street (upstream)	*324
			Adams Street (upstream)	*402
			Exchange Street (upstream)	*434
			West Street (upstream)	*463
			Upstream Corporate Limits	*494
		Fall Brook	Confluence with North Nashua River	*286
			Confluence of Tributary A to Fall Brook	*286
			Litchfield Street (upstream)	*349
			Great Street (upstream)	*461
			Decicco Drive (upstream)	*510
			Pleasant Street (upstream)	*580
			Fall Brook Reservoir Dam (upstream)	*652
		Tributary to Monoosnoc Brook	Confluence with Monoosnoc Brook	*434
			Kingman Drive (upstream)	*520
		Tributary A to Fall Brook	Confluence with Fall Brook	*286
			Conrail (upstream)	*360
			Dam (downstream)	*452
		Tributary B to Fall Brook	Confluence with Fall Brook	*349
			Central Street (upstream)	*381
			Approximately 800' upstream of Union Street	*384
		Tributary C to Fall Brook	Confluence with Fall Brook	*408
			Anthony Road (upstream)	*540
		Baker Brook	Downstream Corporate Limits	*351
			Upstream Corporate Limits	*353

Maps available for inspection at the Leominster City Hall Planning Department, 25 West Street, Leominster, Massachusetts 01453.

Send comments to the Honorable Raymond Harper, Mayor of the City of Leominster, City Hall, 25 West Street, Leominster, Massachusetts 01453

Massachusetts	Lunenburg, Town, Worcester County	Baker Brook	Downstream Corporate Limits	*353
			Fitchburg-Lunenburg Corporate Limits (Approximately 1,650' upstream of Youngs Road).	*368
			Most upstream Fitchburg-Lunenburg Corporate Limits	*378
		Pearl Hill Brook	Downstream Corporate Limits	*383
			Upstream side of White Street	*437
			Upstream side of Northfield Road	*463
			Upstream Corporate Limits	*466
		Tributary to Pearl Hill Brook	Confluence with Pearl Hill Brook	*399
			Approximately 1,800' upstream from confluence with Pearl Hill Brook.	*420
			Approximately 2,350' downsteam from West Street	*433
		Mulpus Brook	Downstream Corporate Limits	*296
			Approximately 300' upstream of Access Road	*323
		Catacoonamug Brook	Downstream Corporate Limits	*302
			Downstream Reservoir Road	*313
			Confluence of Tributary to Catacoonamug Brook	*317
		Tributary to Catacoonamug Brook	Confluence with Catacoonaumg Brook	*317
			Upstream side of Page Street	*370

Maps available for inspection at the Lunenburg, Town Planning Board, Town Hall, 17 Main Street, Lunenburg, Massachusetts.

Send comments to the Honorable August N. Misner, Chairman of the Town of Lunenburg Board of Selectmen, Town Hall, 17 Main Street, Lunenburg, Massacusetts 01462.

Massachusetts	Sterling, Town, Worcester County	Stillwater River	350' downstream of Muddy Pond Road Bridge	*405

Proposed Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream side of Crowley Road Bridge	*425
			Upstream side of State Route 62 Bridge	*433
			Upstream side of State Route 140 Bridge	*457
			1,600' upstream of Houghton Road Bridge	*495
		Connelly Brook	280' downstream of State Route 12 Bridge	*441
			150' upstream of Jewett Road Bridge	*457
			Upstream of State Route 62 culvert	*501
		Wekepeke Brook	70' downstream of Pratt Junction	*375
			Downstream side of Boston and Maine Railroad Culvert.	*391
		East Waushacum Pond	Entire shoreline	*440

Maps available for inspection at the Sterling Town Hall Planning Board, Main Street, Sterling, Massachusetts.

Send comments to the Honorable John Abarb, Chairman of the Town of Sterling Board of Selectmen, Main Street, Sterling, Massachusetts 01564.

Massachusetts	Sutton, Town, Worcester County	Blackstone River	Downstream Corporate Limits	*318
			Downstream Chase Road	*329
			Upstream Corporate Limits	*341
		Dark Brook	Confluence with Mumford River	*438
			Downstream Tucker's Pond Dam	*444
			Upstream end of Tucker's Pond	*459
		Mumford River	Downstream Corporate Limits	*312
			Sutton/Douglas Corporate Limits	*318
			Uxbridge/Sutton Corporate Limits	*389
			Upstream Mumford Road	*397
			Upstream side of upstream crossing of Manchaug Road.	*455
		Spring Brook	Confluence with Blackstone River	*327
			Downstream Boston Road	*372
			Approximately 200' upstream of second dam	*391

Maps available for inspection at the Sutton Elementary School, Sutton, Massachusetts.

Send comments to the Honorable Ronald Pierpont, Chairman of the Town of Sutton Board of Selectmen, Town Hall, Uxbridge Road, Sutton, Massachusetts 01527.

New Hampshire	Berlin, City, Coos County	Androscoggin River	Downstream Corporate Limits	*904
			Upstream of Cross Hydro Dam	*925
			3,300' upstream of Cross Hydro Dam	*939
			3,940' upstream of Cross Hydro Dam	*975
			5,100' upstream of Cross Hydro Dam	*1,000
			1,800' upstream of J. Brody Smith Dam	*1,030
			Downstream of Riverside Hydro Dam	*1,058
			Upstream of Riverside Hydro Dam	*1,079
			Upstream of Sawmill Hydro Dam	*1,096
			Downstream of Twelfth Street	*1,100
			Upstream Corporate Limits	*1,110
		Dead River—Jericho Brook	At mouth of Pleasant Street Culvert	*992
			Upstream of Off York Street	*995
			1,450' upstream of Pleasant Street Culvert	*1,025
			3,660' upstream of Pleasant Street Culvert	*1,050
			Upstream of Marsh Road	*1,052
			Downstream of Canadian National Railroad	*1,059
			780' upstream of Canadian National Railroad	*1,067

Maps available for inspection at the Community Development Office, Berlin City Hall, Berlin, New Hampshire.

Send comments to the Honorable Michael Donovan, City Manager of the City of Berlin, City Hall, Berlin, New Hampshire 03570.

New Jersey	Leonia, Borough, Bergen County	Overpeck Creek	Downstream Corporate Limits	*9
			Upstream Corporate Limits	*9
		Flat Rock Brook	Confluence with Overpeck Creek	*9
			Upstream Corporate Limits	*9

Maps available for inspection at the Office of the Borough Administrator, Borough Hall, 312 Broad Avenue, Leonia, New Jersey.

Send all comments to Honorable Arthur F. Jones, Mayor of the Borough of Leonia, Borough Hall, 312 Broad Avenue, Leonia, New Jersey 07605.

New Jersey	Mendham, Township, Morris County	North Branch Raritan River	Downstream Corporate Limits	*296
			Mosle Road (upstream side)	*317
			Confluence of McVickers Brook	*319
			Union Schoolhouse Road (upstream side)	*347
			Confluence of Burnett Brook	*361
			State Route 24 (upstream side)	*394
			Upstream Corporate Limits	*423
		Burnett Brook	Confluence with North Branch Raritan River	*361
			Downstream confluence of Indian Brook	*373
			State Route 24 (upstream side)	*408
			Upstream confluence of Indian Brook	*446
			Old Mill Road (upstream side)	*470
			Footbridge (upstream side)	*530
			Old Mill Road (upstream side) (upstream crossing)	*635
			Upstream Corporate Limits	*708
		Indian Brook	Confluence with Burnett Brook	*373
			Approximately 1,140' upstream of the confluence with Burnett Brook.	*383
			Corporate Limits	*401
		Dawsons Brook	Confluence with Burnett Brook	*702
			Ironia Road (upstream side)	*722
			Corporate Limits	*747
		Passaic River	Downstream Corporate Limits	*332
			Jockey Hollow Road (upstream side) (1st crossing)	*423
			Tempe Wick Road (upstream side) (1st crossing)	*446

Proposed Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Corey Lane (upstream side)	*458
			Tempe Wick Road (upstream side) (2d crossing)	*468
			Approximately 785' upstream of Dam	*472
		Whippany River	Downstream Corporate Limits	*346
			Tingley Road (upstream side)	*363
			Footbridge (upstream side)	*386
			Confluence of Harmony Brook	*396
		Harmony Brook	Confluence with Whippany River	*396
			Main Street (upstream side)	*429
			Private Road (upstream side) (1st crossing)	*447
			Woodland Road (upstream side) (1st crossing)	*538
			Approximately 100' upstream of Woodland Road (2nd crossing).	*599
Maps available for inspection at the Township Building, West Main Street, Brookside, New Jersey.				
Send all comments to Honorable W. Augustus Wrentsch, Mayor of the Township of Mendham, Township Building, West Main Street, Brookside, New Jersey 07926.				
New Jersey	Millville, City, Cumberland County	Maurice River	Downstream Corporate Limits	*9
			Union Lake Dam (Upstream side)	*30
			Upstream Corporate Limits	*31
		White Marsh Run	Confluence with Maurice River	*9
			Cedar Street (Upstream side)	*22
			Esbill Avenue (Upstream side)	*38
			Reick Avenue (Downstream side)	*45
		Petticoat Stream	Confluence with Maurice River	*9
			Kates Boulevard (Upstream side)	*31
			East Pine Street (Upstream side)	*38
			Tenth Street (Downstream side)	*41
Maps available for inspection at the Office of the City Engineer, South High Street, Millville, New Jersey.				
Send all comments to Honorable Chester M. Goodwin, Mayor of the City of Millville, P.O. Box 609, South High Street, Millville, New Jersey 08332.				
New Jersey	Penns Grove, Borough, Salem County	Delaware River	Entire shoreline within Corporate Limits	*9
Maps available for inspection at the Municipal Building, Penns Grove, New Jersey.				
Send comments to Honorable Joseph Bracale, Jr., Mayor of the Borough of Penns Grove, P.O. Box 527, Penns Grove, New Jersey 08069.				
New Jersey	Swedesboro, Borough, Gloucester County	Raccoon Creek	Locke Avenue (upstream side)	*9
			Kings Highway (upstream side)	*10
Maps available for inspection at the Municipal Building, 500 Kings Highway, Swedesboro, New Jersey.				
Send comments to Honorable Joseph Musumeci, Mayor of the Borough of Swedesboro, P.O. Box 58, 5500 Kings Highway, Swedesboro, New Jersey 08085.				
New Jersey	Vineland City, Cumberland County	Scotland Run	Upstream Willow Grove Lake Dam	*75
			Upstream State Route 55 (Northbound)	*78
		Long Branch	Confluence with Blackwater Branch	*89
			Corporate Limits	*93
		Piney Branch	Confluence with Blackwater Branch	*79
			Downstream of North Valley Avenue	*86
		Manantico Creek	Upstream of Manantico Lake Dam	*55
			Upstream of Dante Avenue	*63
		Cedar Branch	Confluence with Manantico Creek	*63
			Downstream of Chestnut Avenue	*71
			Downstream of Maple Avenue	*81
		Blackwater Branch	Approximately 1,875' downstream of Maurice River Parkway.	*57
			Upstream of North Mill Road	*65
			Upstream of Delsea Drive	*79
			Upstream of Northeast Avenue	*84
			Corporate Limits	*93
		Manumuskin River	Downstream Corporate Limits	*33
			Approximately 5,450' downstream of Old Mays Landing road.	*51
			Upstream of Mays Landing Road	*61
			Upstream Corporate Limits	*75
		Maurice River	Downstream Corporate Limits	*31
			Approximately 2 miles upstream of Corporate Limits	*40
			Downstream of Landis Avenue	*50
			Upstream of Garden Road	*62
			Downstream of Weymouth Road	*71
Maps available for inspection at the Office of the City Engineer, City Hall, Vineland, New Jersey.				
Send comments to Honorable Patrick Fiorelli, Mayor of the City of Vineland, City Hall, Vineland, New Jersey 08360.				
New Jersey	Washington Borough, Warren County	Shabbecong Creek	Downstream Corporate Limits	*388
			Approximately 700' upstream of corporate limits (upstream of Access Road bridge).	*394
			Upstream of Apartment Drive	*399
			Upstream of Bridge Abutments	*404
			Upstream of Foot Bridge	*409
			Approximately 550' downstream of South Wandling Avenue.	*417
			Upstream of South Wandling Avenue	*425
			Upstream of South Lincoln Avenue	*431
			Upstream of Broad Street	*438
			Upstream of Route 31	*446
			Upstream of Flower Avenue	*465
			Upstream corporate limits	*470
		Pohatcong Creek	Approximately 1,525' downstream of Kinnaman Road	*391

Proposed Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 120' downstream of Kinnaman Road	*392
Maps available for inspection at the Office of the Borough Manager, Municipal Building, 100 Belvidere Avenue, Washington, New Jersey.				
Send comments to Honorable William E. Hafler, Mayor of the Borough of Washington, Municipal Building, 100 Belvidere Avenue, Washington, New Jersey 07882.				
New York	Ossining, Village, Westchester County	Hudson River	Entire Shoreline	*8
		Kil Brook	Downstream Corporate Limits	*216
			Upstream of Park Avenue	*257
			Upstream of Campwoods Road	*334
			Downstream of State Route 9A	*372
Maps available for inspection at the Village Hall, 16 Croton Avenue, Ossining, New York 10562.				
Send comments to Honorable Edward M. Wheeler, Mayor of the Village of Ossining, 16 Croton Avenue, Ossining, New York.				
Pennsylvania	Daugherty, Township, Beaver County	Beaver River	Downstream Corporate Limits	*734
			Upstream Corporate Limits	*737
		Blockhouse Ru	Downstream Corporate Limits	*808
			Confluence of Tributary to Blockhouse Run	*835
			Private Drive (Upstream Side) approximately 1,230' upstream of confluence of Tributary to Blockhouse Run.	*853
			Approximately 5,680' upstream of confluence of Tributary to Blockhouse Run.	*918
		Tributary to Blockhouse Run	Confluence with Blockhouse Run	*835
			Blockhouse Run Road (Upstream Side)	*889
			Frishkorn Road (Upstream Side)	*916
			Silver Spring Road (Upstream Side)	*981
			Approximately 700' upstream of Silver Spring Road	*1,031
Maps available for inspection at the Daugherty Municipal Building, New Brighton, Pennsylvania.				
Send comments to Honorable George Rossick, Chairman of the Daugherty Board of Supervisors, 4139 Marion Hill Road, New Brighton, Pennsylvania 15066.				
Pennsylvania	Pulaski, Township, Beaver County	Tributary to Blockhouse Run	Downstream Corporate Limits (Uptream side of Private Drive).	*741
			Approximately 1,310' upstream of Corporate Limits	*820
			Rochester Road (Upstream side)	*899
			Upstream Corporate Limits	*957
Maps available for inspection at the Pulaski Municipal Building, New Brighton, Pennsylvania.				
Send comments to Honorable Donald Moore, Chairman of the Pulaski Board of Supervisors, c/o Ina Weber, Township Secretary, 3401 Sunflower Road, New Brighton, Pennsylvania 15066.				
Pennsylvania	Hollidaysburg, Borough, Blair County	Beaverdam Branch Juniata River	Upstream State Route 36	*942
			Upstream Allegheny Street	*951
			Corporate Limits, approximately 1,500' upstream Allegheny Street.	*955
			Upstream Corporate Limits	*967
		Brush Run	Upstream Scotch Valley Road	*942
			Upstream Edgar Street	*953
			Approximately 2,300' upstream Penn Street	*960
			Upstream Corporate Limits	*966
Maps available for inspection at the Borough Municipal Building, Hollidaysburg, Pennsylvania.				
Send comments to Honorable Charles Harclerode, Mayor of Hollidaysburg, 401 Blair Street, Hollidayburg, Pennsylvania 16648.				
Pennsylvania	Susquehanna, Township, Juniata County	Susquehanna River	Downstream Corporate Limits	*405
			Confluence of West Mahantango Creek	*409
		West Mahantango Creek	Confluence with Susquehanna River	*409
			Approximately 1,300' upstream of Township Route 425	*412
			U.S. Route 104 (upstream)	*428
		West Branch Mahantango Creek	Approximately 90' downstream of confluence of Tributary A.	*463
			Dam (Upstream)	*471
			Township Route 482 (upstream)	*485
			Approximately 750' upstream of Legislative Route 34012.	*496
		Tributary A	Confluence with West Branch Mahantango Creek	*464
			Township Route 431 (Upstream)	*490
			Approximately 1,840' upstream of Township Route 431	*520
		Dobson Run	Confluence with West Branch Mahantango Creek	*460
			Legislative Route 34012 (upstream)	*478
			Approximately 5,270' downstream of Township Route 417.	*503
			Township Route 417 (downstream)	*533
		Tributary B	Confluence with Dobson Run	*478
			Approximately 2,640' upstream of Dobson Run	*499
		Leiningers Run	Confluence with West Branch Mahantango Creek	*469
			Township Route 415 (downstream)	*496
Maps available for inspection at the residence of the Township Secretary, MS. Gay Bitting, R.D. 1, Liverpool, Pennsylvania.				
Send comments to the Honorable Robert Reichenbach, Chairman of the Susquehanna Board of Supervisors, R.D. 2, Mt. Pleasant Mills, Pennsylvania 17853.				
Virginia	Courtland, Town, Southampton County	Nottoway River	Upstream of Interstate Route 58 and State Route 35 Bypass (under construction).	*23
			Upstream of Norfolk, Danville & Franklin Railway Company.	*25
			Upstream Corporate Limits	*26
Maps available for inspection at the Town Hall, Courtland, Virginia.				
Send comments to the Honorable Ray George, Mayor of Courtland, P.O. Box 146, Courtland, Virginia 23837.				

Proposed Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
West Virginia	Cedar Grove, Town, Kanawha County	Kanawha River	Downstream Corporate Limits	*610
			Upstream Corporate Limits	*611
		Ko0ys Creek	Confluence with Kanawha River	*611
			Downstream of Private Drive	*624
			Upstream Corporate Limits	*631
Maps available for inspection at the Town Office, Cedar Grove, West Virginia.				
Send comments to the Honorable Harry Hagem, Mayor of Cedar Grove, P.O. Box 536, Cedar Gove, West Virginia 25039.				
West Virginia	Chesapeake, Town, Kanawha County	Kanawha River	Downstream Corporate Limits	*602
			Upstream Corporate Limits	*604
		Fields Creek	Confluence with Kanawha River	*604
			Upstream Corporate Limits	*604
Maps available for inspection at the Town Offices, Chesapeake, West Virginia.				
Send comments to the Honorable Bill Eastep, Mayor of Chesapeake, 12404 MacCorkle Avenue, Chesapeake, West Virginia 25315.				
West Virginia	Dunbar, City, Kanawha County	Kanawha River	Downstream Corporate Limits	*591
			Approximately 1,200' downstream Interstate 64 bridge	*592
			Upstream Corporate Limits	*593
Maps available for inspection at the City Hall, 12th and Myers Avenue, Dunbar, West Virginia.				
Send comments to the Honorable Frank Leone, Mayor of Dunbar, City Hall, 12th and Myers Avenue, Dunbar, West Virginia 25064.				
West Virginia	East Bank, Town, Kanawha County	Kanawha River	Downstream Corporate Limits	*608
			Upstream Corporate Limits	*610
		East Bank Tributary	Upstream of Chessie System	*620
			Upstream of Ferry Street	*625
			Downstream of State Route 61	*642
			Approximately 1,240' upstream State Route 61	*692
			Upstream Corporate Limits	*756
Maps available for inspection at Town Offices, East Bank, West Virginia.				
Send comments to Honorable Charles A. Blair, II, Mayor of East Bank, P.O. Box 307, East Bank, West Virginia 25067.				
West Virginia	Glasgow, Town, Kanawha County	Kanawha River	Downstream Corporate Limits	*611
			Upstream Corporate Limits	*611
Maps available for inspection at the Town Hall, 129 Fourth Avenue, Glasgow, West Virginia.				
Send comments to Honorable P. F. Tucker, Mayor of Glasgow, Town Hall, 129 Fourth Avenue, Glasgow, West Virginia 25088				
West Virginia	Montgomery, City Fayette and Kanawha Counties	Kanawha River	Downstream Corporate Limits	*620
			Confluence with Morris Creek	*622
			Montgomery Bridge (downstream side)	*624
			Upstream Corporate Limits	*626
		Morris Creek	Confluence with Kanawha River	*622
			Old State Route 61 bridge (upstream side)	*629
			Approximately 690' upstream of Old State Route 61	*638
Maps available for inspection at the Office of Public Works, City Hall, 133 Fifth Avenue, Montgomery, West Virginia.				
Send comments to Honorable Charles Smith, Mayor of Montgomery, City Hall, 133 Fifth Avenue, Montgomery, West Virginia 25136				
West Virginia	Saint Albans, City, Kanawha County	Kanawha River	Downstream Corporate Limits	*588
			Approximately 9,1690 upstream of East Nitro-Saint Albans Street.	*589
			Upstream Corporate Limits	*589
		Coal River	Confluence with Kanawha River	*588
			Upstream Corporate Limits	*588
		Indian Creek	Confluence with Coal River	*588
			Upstream Corporate Limits	*588
Maps available for inspection at the Office of the Mayor, 1499 MacCorkle Avenue, Saint Albans, West Virginia.				
Send comments to Honorable Averil Ramsey, Mayor of Saint Albans, 1499 MacCorkle Avenue, Box 468, Saint Albans, West Virginia 25177.				
West Virginia	South Charleston, City, Kanawha County	Kanawha River	Downstream Corporate Limits	*591
			Interstate 64 bridge (downstream)	*592
			"G" Street extended (downstream)	*593
			Upstream Corporate Limits	*594
		Davis Creek	Confluence with Kanawha River	*592
			Chessie System (downstream)	*593
			Upstream Corporate Limits	*594
Maps available for inspection at the City Engineer's Office, City Hall, 4th Avenue and D Street, South Charleston, West Virginia.				
Send comments to Honorable Richard A Robb, Mayor of South Charleston, City Hall, 4th Avenue and D Street, South Charleston, West Virginia 25303.				

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

Issued: September 15, 1981.

John Dickey,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 81–28023 Filed 9–28–81; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA 6144]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Illinois, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 287–0270, Federal Insurance Administration, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968) (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4 (a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The commuity may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prescribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground; *Elevation in feet (NGVD)
Illinois	(C) Crystal Lake, McHenry County	Crystal Creek	About 0.9 mile downstream of Dartmoor Drive	*851
			About 150 feet downstream of Dartmoor Drive	*871
			About 500 feet upstream of Dartmoor Drive	*874
			About 100 feet upstream of McHenry Avenue	*880
			About 100 feet upstream of St. Andrews Road	*886
			Just upstream of Country Club Road	*891
			Just downstream of Dole Avenue	*893
		Crystal Lake	Shoreline	*893
	Maps available for inspection at the City Clerk's Office, 121 North Main Street, Crystal Lake, Illinois.			
	Send comments to Honorable Carl E. Wehde, Mayor, City of Crystal Lake, 121 North Main Street, Crystal Lake, Illinois 60014.			
Illinois	(V) Lisbon, Kendall County	North Arm Saratoga Creek	About 150 feet downstream of earth dam	*655
			Just upstream of earth dam	*661
			Upstream corporate limits	*670
	Maps available for inspection at the Lisbon Implement Company, Lisbon, Illinois.			
	Send comments to Honorable Leo Dean Morris, Village President, Village of Lisbon, Lisbon Village Hall, Route 1, Newark, Illinois 60541.			
Illinois	(V) Newark, Kendall County	Clear Creek	At upstream corporate limits	*618
			About 750 feet upstream of Chicago Road	*646
			At upstream corporate limits	*684
	Maps available for inspection at the Municipal Building, Newark, Illinois.			
	Send comments to Honorable Jack McDowell, Village President, Village of Newark, Village Hall, P.O. Box 1, Newark, Illinois 60541.			
Illinois	(V) Rochester, Sangamon County	South Fork Sangamon River	Approximately 1,800 feet upstream of State Route 29	*543
			At upstream corporate limits	*545
		Black Branch	At downstream corporate limits	*550
			Just upstream of Mill Street	*556
			Just upstream of the Chessie System Railroad	*560
			At upstream corporate limits	*560
	Maps available for inspection at the Village Hall, 128 North John Street, Rochester, Illinois.			
	Send comments to Honorable Ernst Bartels, Village President, Village of Rochester, Village Hall, 128 North John Street, Rochester, Illinois. 62563.			
Illinois	(V) Sleepy Hollow, Kane County	Sleepy Creek	About 700 feet downstream of Locust Drive	*733
			About 350 feet downstream of Bullfrog Lane	*738
			Just upstream of Bullfrog Lane	*742

Proposed Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 450 feet downstream of Hillcrest Drive	*744
			About 400 feet upstream of Hillcrest Drive	*764
			About 1,450 feet upstream of Hillcrest Drive	*764
			Just downstream of State Route 72	*769
		Jelkes Creek	About 200 feet downstream of south corporate limits	*740
			About 350 feet downstream of Thorobred Lane	*750
			About 300 feet upstream of Thorobred Lane	*756
			Just downstream of Sleepy Hollow Road	*769
	Maps available for inspection at the Clerk's Office, Village Hall, One Thorobred Lane, Dundee, Illinois.			
	Send comments to Honorable Theresa Peterson, Village President, Village of Sleepy Hollow, Village Hall, One Thorobred Lane, Dundee, Illinois 60118.			
Illinois	(C) Springfield, Sangamon County	Sangamon River	About 2.25 miles downstream of Chicago and Illinois Midland Railway	*527
			About 1.44 miles upstream of Chicago and Illinois Midland Railway	*529
		Spring Creek	At mouth at Sangamon River	*528
			At confluence of Town Branch	*536
			Just downstream of Meadow Brook Road	*543
		Jacksonville Branch	About 1,500 feet downstream of Churchill Road	*540
			About 400 feet downstream of Fayette Avenue	*556
			Just upstream of Park Drive South	*563
			Just downstream of U.S. Route 54	*584
		Town Branch	Within corporate limits	*536
		Jacksonville Branch Tributary	About 0.21 mile downstream of Bates Avenue	*574
			Just downstream of Bates Avenue	*576
		Sugar Creek	About 1.8 miles downstream of State Route 29	*542
			Just downstream of Spaulding Dam	*547
		Horse Creek	At mouth at South Fork Sangamon River	*545
			About 2.8 miles upstream of mouth	*546
	Maps available for inspection at the Engineering Department, Municipal Building, Room 307, 7th and Monroe Street, Springfield, Illinois.			
	Send comments to Honorable J. Michael Houston, Mayor, City of Springfield, Municipal Building, 7th and Monroe Street, Springfield, Illinois 62701.			
Kansas	(C) Great Bend, Barton County	Arkansas River	About 1.5 miles downstream of Main Street	*1,841
			About 6.3 miles upstream of Main Street	*1,889
		Wet Walnut Creek	About 2.2 miles downstream of Kiowa Road	*1,827
			About 7.1 miles upstream of Kiowa Road	*1,860
		Dry Walnut Creek	At mouth of Wet Walnut Creek	*1,840
			About 0.8 mile upstream of Kiowa Road	*1,843
			Just downstream of Washington Street	*1,856
			About 1.0 mile upstream of McKinley Street	*1,861
		Lichesky Ditch	Just upstream of Kiowa Road	*1,837
			Just downstream of Frey Road	*1,842
	Maps available for inspection at the City Hall, P.O. Box 1168, Great Bend, Kansas.			
	Send comments to Honorable Gail L. Lupton, Mayor, City of Great Bend, City Hall, P.O. Box 1168, Great Bend, Kansas 67530.			
Michigan	(C) Albion, Calhoun County	Kalamazoo River	About 1.1 miles downstream of North Albion Street	*929
			At confluence of East Branch Kalamazoo River	*939
		South Branch Kalamazoo River	Just downstream of Victory Park Dam	*940
			Just upstream of Victory Park Dam	*946
			About 0.5 mile upstream of South Superior Street	*946
		East Branch Kalamazoo River	About 1,900 feet upstream of South Hannah Street	*943
		Mill Race	At confluence with Kalamazoo River	*938
			Just upstream of Flood Gates	*943
		Unnamed Creek	At confluence with East Branch Kalamazoo River	*943
			Just upstream of Riverside Drive	*948
	Maps available for inspection at the City Hall, 112 West Cass Street, Albion, Michigan.			
	Send comments to Honorable Charles W. Jones, Mayor, City of Albion, City Hall, 112 West Cass Street, Albion, Michigan 49224.			
Michigan	(V) Brooklyn, Jackson County	River Raisin	About 100 feet downstream of Mill Street	*945
			Just downstream of Brooklyn Dam	*951
		Goose Creek	At downstream corporate limit	*945
			At upstream corporate limit	*946
	Maps available for inspection at the Village Hall, 300 School Street, Brooklyn, Michigan.			
	Send comments to Honorable Donna Howard, Village President, Village of Brooklyn, Village Hall, 300 School Street, P.O. Box 96, Brooklyn, Michigan 49230.			
Michigan	(Twp.) Kalamazoo, Kalamazoo County	Kalamazoo River	About 0.8 mile downstream of Conrail	*756
			About 0.4 mile upstream of Mosel Avenue	*760
			About 700 feet downstream of King Highway	*764
			Just downstream of Sprinkle Road	*766
		Davis Creek	At confluence with Kalamazoo River	*765
			Just upstream of Olmsted Road	*777
	Maps available for inspection at the Township Hall, 1720 Riverview Drive, Kalamazoo, Michigan.			
	Send comments to Honorable Beverly Britner, Supervisor, Township of Kalamazoo, Township Hall, 1720 Riverview Drive, Kalamazoo, Michigan 49004.			
Michigan	(C) Luna Pier, Monroe County	Lake Erie	Within corporate limits	*578
	Maps available for inspection at the City Hall, 4357 Buckeye Street, Luna Pier, Michigan.			
	Send comments to Honorable Clyde R. Evans, Mayor, City of Luna Pier, City Hall, 4357 Buckeye Street, Luna Pier, Michigan 48157.			
Michigan	(V) Manchester, Washtenaw County	River Raisin	About 1,200 feet downstream of Manchester Ford Dam	*861
			Just downstream of Manchester-Ford Dam	*863
			Just uptream of Manchester-Ford Dam	*880

Proposed Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just downstream of Manchester Mill Dam	*881
			Just upstream of Main Street	*894
			About 1.0 mile upstream of Main Street	*895
Maps available for inspection at the Village Hall, 120 South Clinton, Manchester, Michigan. Send comments to the Honorable Jeffrey Schaffer, Village President, Village of Manchester, Village Hall, 120 South Clinton, Manchester, Michigan 48158.				
Michigan	(V) Ravenna, Muskegon County	Crockery Creek	About 900 feet downstream of Conrail	*637
			About 0.7 mile upstream of Main Street	*644
Maps available for inspection at the Village Hall, 12090 Metheny Street, Ravenna, Michigan. Send comments to the Honorable Donald Hazen, Village President, Village of Ravenna, Village Hall, 12090 Metheny Street, Ravenna, Michigan 49451.				
Michigan	(V) Sparta, Kent County	Nash Creek	About 170 feet downstream of Division Street	*739
			About 0.6 mile upstream of State Street	*754
Maps available for inspection at the Village Hall, 160 East Division Street, Sparta, Michigan. Send comments to the Honorable Edward Soderstrom, Village President, Village of Sparta, Village Hall, 160 East Division Street, Sparta, Michigan 49345.				
Michigan	(C) Tecumseh, Lenawee County	River Raisin	Just upstream of East Russell Road	*744
			Just downstream of Standish Dam	*758
			Just upstream of Standish Dam	*764
			Just downstream of Tecumseh Dam	*767
			Just upstream of Tecumseh Dam	*781
		Evans Creek	Just downstream of Globe Dam	*752
			Just upstream of Globe Dam	*764
			About 2,000 feet upstream of Gobe Dam	765
			About 300 feet downstream of Conrail	*789
			Just upstream of Union Street	*796
			Just upstream of Occidental Highway	*815
Maps available for inspection at the City Hall, 309 East Chicago Boulevard, Tecumseh, Michigan. Send comments to Honorable Harold E. Easton, Mayor, City of Tecumseh, City Hall, 309 East Chicago Boulevard, Tecumseh, Michigan 49286.				
Michigan	(C) Walker, Kent County	Grand River	About 0.9 mile downstream of State Highway 11	*605
			About 3.1 miles upstream of State Highway 11	*606
			About 1.9 miles downstream of North Park Street	*617
			About 0.4 mile upstream of North Park Street	*619
Maps available for inspection at the Building Department, City Hall, 4243 Rememberance Road, N.W., Grand Rapids, Michigan. Send comments to Honorable Adrian J. Stehower, Mayor, City of Walker, City Hall, 4243 Rememberance Road, N.W., Grand Rapids, Michigan 49504.				
Michigan	(Twp.) Washington, Macomb County	Yates Drain	Just upstream of 26 Mile Road	*654
			Just upstream of 27 Mile Road	*676
		Taft Drain	At confluence with Yates Drain	*676
			Just downstream of 28 Mile Road	*701
		Tributary No. 1	At confluence with Yates Drain	*674
			Just downstream of Van Dyke Road	*722
			Just upstream of Campground Road	*733
		Healy Drain	Just upstream of Grand Trunk Western Railroad	*781
			About 900 feet upstream of Sisson Street	*815
		Price Brook	Just upstream of Grand Trunk Western Railroad	*749
			Just upstream of Killarney Lane	*777
			Just upstream of Kildare Lane	*827
			Just downstream of Campground Road	*862
		Price Brook Tributary No. 1	At confluence with Price Brook	*799
			Just downstream of Earth Dam	*822
			Just upstream of Earth Dam	*828
			Just downstream of Campground Road	*851
		McClure Drain	About 1,400 feet upstream of Snell Road	*817
			About 2,700 feet upstream of Snell Road	*823
Maps available for inspection at the Town Hall, 155 South Rawles, Romeo, Michigan. Send comments to Honorable Robert W. Evely, Supervisor, Township of Washington, Town Hall, 155 South Rawles, Romeo, Michigan 48065.				
Minnesota	(C) Dakota, Winona County	Mississippi River	At downstream corporate limit	*647
			At upstream corporate limit	*648
		Middle Creek	Just upstream of Interstate 90 Exit Ramp	*669
			At upstream corporate limit	*669
		South Creek	Just upstream of Chicago, St. Paul and Pacific Railroad.	*654
			Just upstream of Interstate 90 Frontage Road	*681
			At upstream corporate limit	*688
Maps available for inspection at Route 1, Box 4, Dakota, Minnesota. Send comments to Honorable Lloyd Kaston, Mayor, City of Dakota, Route 1, Box 4, Dakota, Minnesota 55925.				
Minnesota	(C) Goodview, Winona County	Crooked Slough	Within the community, north of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*654
Maps available for inspection at the City Hall, 4140 5th Street, Godview, Minnesota. Send comments to Honorable Boyd Nichols, Mayor, City of Goodview, City Hall, 4140 5th Street, Goodview, Minnesota 55987.				
Missouri	(C) Berger, Franklin County	Missouri River	Within corporate limits	*511
Maps available for inspectin at Mayor's Home, Berger, Missouri. Send comments to the Honorable Clement Meyer, Mayor, City of Berger, City Hall, Berger, Missouri 63014.				
Missouri	(C) Dexter, Stoddard County	Dexter Creek	About 900 feet downstream of State Highway 114	*320
			Just downstream of Stoddard Street	*326

Proposed Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 0.4 mile upstream of McCollum Street	*350
		Shallow Flooding from Dudley Main Ditch	About 0.25 mile downstream of Two Mile Road	*357
			At intersection of U.S. Route 60 and West Elk Street	*369
Maps available for inspection at the City Administration Building, Dexter, Missouri.				
Send comments to Honorable Willis Conner, Mayor, City of Dexter, City Administration Building, Dexter, Missouri 63841.				
Missouri	(C) Valley Park, St. Louis County	Meramec River	At downstream corporate limits	*428
			At upstream corporate limits	*433
		Fish Pot Creek	Within the corporate limits	*432
		Grand Glaize Creek	At mouth	*429
			Just upstream of Missouri Pacific Railroad	*431
			At upstream corporate limits	*435
Maps available for inspection at the City Hall, 320 Bengon, Valley Park, Missouri.				
Send comments to Honorable Calvin Hedrick, Mayor, City of Valley Park, City Hall, 320 Bengon, Valley Park, Missouri 63088.				
Ohio	(C) Massillon, Stark County	East Sippo Creek	About 3,700 feet downstream of Lincoln Way East (at culvert inlet).	*947
			About 1,400 feet downstream of Lincoln Way East	*972
Maps available for inspection at the Mayor's Office, City Hall, 100-102 City Hall Street, Massillon, Ohio.				
Send all comments to Honorable Delbert A. Demmelf, Mayor, City of Massillon, City Hall, 100-102 City Hall Street, Massillon, Ohio 44646.				
Ohio	(V) Minerva, Stark and Carroll Counties	Sandy Creek	At downstream corporate limits	*1031
			Just upstream of Grant Street	*1040
			About 2,100 feet upstream of East Lincoln Way	*1052
			About 700 feet upstream of State Route 183	*1063
Maps available for inspection at the Village Administrator's Office, Town Hall, 209 North Market Street, Minerva, Ohio.				
Send all comments to Honorable Dick W. Mount, Mayor, Village of Minerva, Town Hall, 209 North Market Street, Minerva, Ohio.				
Ohio	(V) Waynesburg, Stark County	Sandy Creek	About 1,120 feet downstream of confluence of Indian Run.	*962
			Just upstream of Waynesburg Drive	*965
			At upstream corporate limits	*967
Maps available for inspection at the Mayor's Office, Town Hall, 141 East Lisbon Street, Waynesburg, Ohio.				
Send all comments to Honorable Charles J. Geraci, Mayor, Village of Waynesburg, Town Hall, 141 East Lisbon Street, Waynesburg, Ohio 44688.				
Wisconsin	(V) Mukwonago, Waukesha County	Fox River	About 1,600 feet downstream of Soo Line Railroad	*784
			Just downstream of Soo Line Railroad	*784
		Lower Phantom Lake	Within community	*792
		Mukwonago River	About 1.0 mile downstream of State Highway 83	*783
			Just downstream of Lower Phantom Lake Dam	*785
			Just upstream of Lower Phantom Lake Dam	*792
Maps available for inspection at the Village Hall, 625 South Rochester, Mukwonago, Wisconsin.				
Send all comments to Honorable Richard J. Hill, Village President, Village of Mukwonago, Village Hall, 625 South Rochester, Mukwonago, Wisconsin 53149.				
Wisconsin	Pewaukee, Waukesha County	Pewaukee River	About 2,000 feet downstream of East Wisconsin Avenue.	*846
			Just upstream of Clark Street	*852
			About 0.9 mile upstream of Sussex Street	*854
		Pewaukee Lake	Within community	*855
Maps available for inspection at the Office of the Village Administrator, Village Hall, 235 Hickory Street, Pewaukee, Wisconsin.				
Send comments to Honorable Alfred K. Hansen, Village President, Village of Pewaukee, Village hall, 235 Hickory Street, Pewaukee, Wisconsin 53072.				
Wisconsin	(C) Whitewater, Walworth County	Whitewater Creek	About 1,400 feet downstream of Starin Road	*800
			Just downstream of East Main Street	*807
			At upstream corporate limits	*824
		Cravath Lake	Shoreline	*815
		Tripp Lake	Shoreline	*823
		Spring Brook	Just upstream of Franklin Street	*816
			At upstream corporate limits	*819
Maps available for inspection at the Office of the Building Inspector, City Hall, 312 West Whitewater Street, Whitewater, Wisconsin.				
Send comments to Honorable Quinn Smet, City Manager, City of Whitewater, City Hall, 312 West Whitewater Street, Whitewater, Wisconsin 53190.				

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

Issued: September 15, 1981.

John Dickey,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 81-28007 Filed 9-28-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 6146]

National Flood Insurance Program; Proposed Flood Elevation Determinations; New Hampshire, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert G. Chappell, National Flood Insurance Program, (202) 287–0270, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968) (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prescribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New Hampshire	Portsmouth, City, Rockingham County	Atlantic Ocean	Entire Portsmouth shoreline	*9
Maps available for inspection at the Planning Department, Portsmouth City Hall, 126 Daniel Street, Portsmouth, New Hampshire.				
Send comments to the Honorable Calvin Canney, City Manager of Portsmouth, 126 Daniel Street, Portsmouth, New Hampshire 03801.				
New Jersey	Carneys Point Township, Salem County	Delaware River	Entire shoreline within the corporate limits	*9
Maps available for inspection at the Office of the Construction Official, Municipal Building, D & Walker Streets, Carneys Point, New Jersey.				
Send comments to Honorable Thomas Belitza, Mayor of Carneys Point, Municipal Building, D & Walker Streets, Carneys Point, New Jersey 08069.				
New Jersey	Clifton (city), Clifton County	Passaic River	At the intersection of State Highway 3 and Passaic River.	*14
			At the intersection of Garden State Parkway and Passaic River.	*33
		Third River	20 feet upstream from the center of the River Road crossing.	*17
			140 feet upstream from the center of the ramp to westbound U.S. Highway 46.	*270
		Weasel Brook	At the intersection of Davidson Street and Weasel Brook.	*31
			20 feet upstream from the center of the Grove Street crossing.	*173
		Branch, Weasel Brook	200 feet downstream from center of Conrail crossing of Branch, Weasel Brook.	*134
		Branch 3-5-2, Weasel Brook	At the intersection of Colfax Avenue and Branch 3-5-2, Weasel Brook.	*128
		Wabash Brook	At the intersection of Interstate Highway 46 and Wabash Brook.	*33
Maps available for inspection at City Clerk's Office, 900 Clifton, Clifton, New Jersey.				
Send comments to the Honorable Gerald Zecker, 900 Clifton, Clifton, New Jersey 07011.				
New Jersey	Knowlton Township, Warren County	Delaware River	Downstream corporate limits	*273
			Upstream confluence of Valley Road branch	*281
			Upstream Conrail (downstream crossing)	*288
			Upstream U.S. 611	*294
			Upstream Conrail (upstream crossing)	*303
			Upstream corporate limits	*315
Maps available for inspection at the Office of the Township Clerk, Municipal Building, Columbia, New Jersey.				
Send comments to Honorable C. Robert Linaberry, Mayor of Knowlton, Municipal Building, Columbia, New Jersey 07825.				

Proposed Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New Jersey	Palisades Park Borough, Bergen County	Overpeck Creek	Downstream corporate limits	*9
			Upstream corporate limits	*9
Maps available for inspection at the Borough Hall, 275 Broad Avenue, Palisades Park, New Jersey.				
Send comments to Honorable Robert Paiotta, Mayor of Palisades Park, Borough Hall, 275 Broad Avenue, Palisades Park, New Jersey 07650.				
New York	Barton Town, Tioga County	Susquehanna River	Downstream corporate limits	*774
			Upstream corporate limits	*784
Maps available for inspection at the Barton Town Hall, 444 Park Avenue, Waverly, New York.				
Send comments to Honorable Edgar M. Dixon, Supervisor of Barton, Town Hall, 444 Park Avenue, Waverly, New York 14892.				
New York	Cleveland Village, Oswego County	Oneida Lake	Entire shoreline	*373
Maps available for inspection at the Village Hall, Cleveland, New York.				
Send comments to Honorable Malchoff Davis, Acting Mayor of Cleveland, Village Hall, Cleveland, New York 13042.				
New York	Skaneateles Town, Onondaga County	Skaneateles Creek	Downstream corporate limits	*589
			Irish Road (upstream side)	*603
			Stump Road (upstream side)	*670
			Upstream side of dam located approximately 1,800' upstream of downstream crossing of Jordan Road.	*721
			Sheldon Road (upstream side)	*765
			Upstream side of Skaneateles Short Line Railroad crossing approximately 2,700' downstream of Old Seneca Turnpike.	*816
			Upstream corporate limits	*857
		Shaneateles Lake	Entire shoreline within community	*867
Maps available for inspection at the Town Hall, 24 Jordan Road, Skaneateles, New York.				
Send comments to Honorable Charles Majors, Supervisor of Skaneateles, Town Hall, 24 Jordan Road, Skaneateles, New York 13152.				
Pennsylvania	Beaver Falls City, Beaver County	Beaver River	Downstream Corporate Limits	*720
			Upstream of Patterson Dam	*734
			Upstream of Eastvale Dam	*753
			Upstream Corporate Limits	*755
		Walnut Bottom Run	Approximately 1,300' downstream of 22nd Street	*779
			22nd Street Upstream	*785
			25th Street Upstream	*792
			6th Avenue Upstream	*803
			Clayton Road Upstream	*823
			Upstream Corporate Limits	*850
		Wallace Run	Upstream Corporate Limits	*755
Maps available for inspection at the Municipal Building, 715 Fifteenth Street, Beaver Falls, Pennsylvania.				
Send comments to Honorable Bruno Campese, Mayor of Beaver Falls, 715 Fifteenth Street, Beaver Falls, Pennsylvania 1510.				
Pennsylvania	Big Beaver Borough, Beaver County	Beaver River	Downstream corporate limits	*755
			Pennsylvania Turnpike (upstream side)	*757
			Upstream corporate limits	*760
		Stockman Run (lower)	Confluence with Beaver River	*758
			Approximately 1,920' upstream of confluence with Beaver River.	*843
			Approximately 385' downstream of Careywood Road	*941
		Stockman Run (upper)	Careywood Road (downstream side)	*949
			Private drive (upstream side) approximately 1,930' downstream of Fairlane Boulevard.	*1,019
			Fairlane Boulevard (upstream side)	*1,063
			Approximately 965' upstream of Fairlane Boulevard	*1,094
		Wallace Run	Confluence with Beaver River	*755
			Culvert inlet upstream of Norwood Drive	*826
			Wallace Run Road (upstream side)	*859
			Private drive (upstream side) approximately 660' downstream of Sunview Drive.	*966
			Sunview Drive (upstream side)	*985
			Shenango Road (upstream side)	*1,073
			Approximately 3,000' upstream of Shenango Road	*1,110
		West Clarks Run	Downstream corporate limits	*912
			Downstream crossing of Conrail (upstream side)	*943
			McKinley Road (upstream side)	*959
			Upstream crossing of Conrail (upstream side)	*1,044
			Approximately 2,100' upstream of Conrail	*1,109
		North Fork Little Beaver Creek (lower).	Downstream corporate limits	*900
			Approximately 7,430' upstream of corporate limits	*917
		North Fork Little Beaver Creek (upper).	Downstream corporate limits	*941
			Upstream corporate limits	*941
		Tributary to Wallace Run	Confluence with Wallace Run	*1,003
			Wallace Run Road (upstream) side)	*1,065
			Approximately 2,280' upstream Wallace Run Road	*1,105
Maps available for inspection at the Big Beaver Borough Building, Beaver Falls, Pennsylvania.				
Send comments to Honorable Daniel Cunning, Sr., Council President of Big Beaver, R.D. 3, Box 183, Beaver Falls, Pennsylvania 15010.				

Proposed Base (100-year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Ellwood City Borough, Lawrence and Beaver Counties	Johnson Run	Confluence with Connoquenessing Creek	*771
			Line Avenue (upstream side)	*873
			Approximately 1,580' upstream of Line Avenue	*910
			Approximately 2,725' upstream of Line Avenue	*938
		Duck Run	Confluence with Connoquenessing Creek	*813
			Approximately 940' upstream of private drive	*846
			Approximately 920' downstream of upstream corporate limits.	*884
			Upstream corporate limits	*914
	Maps available for inspection at the Municipal Building, 525 Lawerence Avenue, Ellwood City, Pennsylvania.			
	Send comments to Honorable Roy P. Meehan, Jr., Council President of Ellwood City, 525 Lawrence Avenue, Ellwood City, Pennsylvania 16117.			
Pennsylvania	Hickory Township, Lawrence County	Neshannock Creek	Approximately 350' downstream of Maitland Road	*899
			Approximately 6,050' upstream of the confluence of Hottenbaugh Run.	*902
			Approximately 4,400' downstream of the confluence of Neshannock Creek tributary.	*910
			Upstream corporate limits	*924
		Hottenbaugh Run	Confluence with Neshannock Creek	*901
			Upstream of State Route 168 (second crossing)	*937
			Upstream of Rodgers Road	*979
			Upstream of McConnell Mill Road	*1,053
		Lick Run tributary	Conrail (upstream side)	*860
			Private drive (upstream side)	*915
			State Route 168 (upstream side)	*1,035
			Approximately 2,400' upstream of State Route 168	*1,130
		Neshannock Creek tributary	Confluence with Neshannock Creek	*920
			Lakewood Road (upstream side)	*990
			Approximately 1,500' upstream of Lakewood Road	*1,021
		Big Run tributary	Approximately 2,790' downstream of Harlansburg Road.	*1,145
			Harlansburg Road (upstream side)	*1,158
			Approximately 4,760' upstream of Harlansburg Road	*1,203
	Maps available for inspection at the residence of the Township Secretary, Mr. John P. McCreary, R.D. 5, New Castle, Pennsylvania.			
	Send comments to Honorable Raymond Jones, Chairman of the Hickory Board of Supervisors, 1817 Harlansburg Road, New Castle, Pennsylvania 16101.			
Pennsylvania	North Sewickley Township, Beaver County	Beaver River	Downstream Corporate Limits	*753
			Pennsylvania Turnpike upstream	*757
			Upstream Corporate Limits	*760
		Connoquenessing Creek	Approximately 3,520' downstream of State Route 65 bridge.	*857
			Approximately 100' upstream of State Route 65 bridge	*862
			Upstream Corporate Limits	*870
		Brush Creek	Confluence with Connoquenessing Creek	*868
			Approximately 2,260' upstream of Bilboberry Road	*875
			Approximately 5,175' upstream of Bilboberry Road bridge.	*882
	Maps available for inspection at the North Sewickley Municipal Building, R.D. 2, Beaver Falls, Pennsylvania.			
	Send comments to Honorable C. Harold Douglass, Chairman of the North Sewickley Board of Supervisors, c/o Sandra Greer, Township Secretary, Municipal Building, R.D. 2, Beaver Falls, Pennsylvania 15010.			

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

Issued: September 15, 1981.

John Dickey,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 81-28024 Filed 9-28-81; 8:45 am]

BILLING CODE 6718-03-M

Notices

Federal Register
Vol. 46, No. 188
Tuesday, September 29, 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

Forest Service

Joint Interchange Order Between Department of the Army and Department of Agriculture; Interchange of Administrative Jurisdiction of Department of the Army Lands and National Forest Lands

This is a notice of an interchange order which describes the interchange of administrative jurisdiction on lands within the boundaries of the Francis Marion National Forest, South Carolina from the Department of Agriculture to the Department of the Army and the interchange of administrative jurisdiction on lands within the George Washington National Forest, Virginia from the Department of the Army to the Department of Agriculture. The interchange order describes the tracts briefly. Legal descriptions are on file in the Office of the District Engineer, Norfolk District, Corps of Engineers, Norfolk, Virginia, and the Office of the Forest Supervisor, George Washington National Forest, Harrisonburg, Virginia. The publication of this order will complete the interchange. Therefore, the order is published as follows:

John H. Ohman,

Acting Chief, Forest Service.

September 23, 1981.

Department of the Army, Department of Agriculture

Gothright Dam and Lake Moomaw, Virginia; Joint Order Interchanging Administrative Jurisdiction of Department of the Army Lands and National Forest Lands

By virtue of the authority vested in the Secretary of the Army and the Secretary of Agriculture by the Act of July 26, 1956 (16 USC 505a, 505b) it is ordered as follows:

(1) The lands under the jurisdiction of the Department of the Army described in Exhibit A, attached hereto and made a part hereof, which lands are within and adjacent to the exterior boundaries of the George Washington National Forest, Virginia, are hereby transferred from the jurisdiction of the Secretary of the Army to the jurisdiction of the Secretary of Agriculture, subject to outstanding rights or interests of record and to such continued use by the Corps of Engineers as is necessary for the construction, protection, and unrestricted operation, maintenance, and administration of the water storage and flood control facilities and functions of the Gathright Dam and Lake Moomaw.

(2) The National Forest lands described in Exhibit B, attached hereto and made a part hereof, which are a part of the Francis Marion National Forest, South Carolina, are hereby transferred from the jurisdiction of the Secretary of Agriculture to the jurisdiction of the Secretary of the Army.

(3) Pursuant to section 2 of the aforesaid Act of July 26, 1956, the National Forest lands transferred to the Secretary of the Army by this order are hereafter subject only to laws applicable to Department of the Army lands comprising the Cooper River Rediversion Project, South Carolina. The Department of the Army lands transferred to the Secretary of Agriculture by this order are hereafter subject to the laws applicable to lands acquired under the Act of March 1, 1911 (36 Stat. 961) as amended.

This order will be effective as of date of publication in the **Federal Register.**

Dated: August 10, 1981.

John O. Marsh, Jr.,

Secretary of the Army.

Dated: July 28, 1981.

John R. Block,

Secretary of Agriculture.

Exhibit A.—Lands Transferred From the Secretary of the Army to the Secretary of Agriculture

Lands under the jurisdiction of the Department of the Army for or in connection with the Gathright Dam and Lake Moomaw in Bath and Alleghany Counties, Virginia, as follows:

Segment 1—All of Tracts 102, 103, 104, 105, 106, 107, 110, 114, 115, 123, 124, 125–1, 126–1, 114C, 131, 132, 133, 125–2, 134, 136C, 138E, 139E, 137, 144E—Portions of Tracts 100, 101, 135, 100–1, 143E.

Segment 2—All of Tracts 100E–2, 200–1, 200E–2, 200E–3, 200E–4, 200–2, 202, 202E–3, 202E–5.

Segment 3—All of Tracts 300, 301C, 302C, 303C, 304C, 305C.

Segment 4—All of Tracts 400–1, 402–1, 400–2.

Segment 5—All of Tracts 500, 500–E, 501, 502, 502E, 503, 503E.

Segment 6—All of Tracts 600E, 601E, 602E, 603E–1, 604E, 122E–2, 603E–2.

All lands transferred herein consist of 7081.38 acres in fee and 17.97 acres easement. Legal descriptions of the transferred tracts and Real Estate Segments Maps depicting their location are on file in the Office of the District Engineer, Norfolk District, Corps of Engineers, Norfolk, Virginia, and the Office of the Forest Supervisor, George Washington National Forest, Harrisonburg, Virginia.

Exhibit B.—Lands Transferred From the Secretary of Agriculture to the Secretary of the Army

Lands under the jurisdiction of the Department of Agriculture for or in connection with the Francis Marion National Forest in Berkeley County, South Carolina, as shown on map of Segment 5, of the Cooper River Rediversion Project, as follows:

Tracts A–1, A–2, A–3 consisting of 29.13 acres.

Legal descriptions of the transferred tracts and Real Estate Segment Map depicting their location are on file in the office of the District Engineer, Savannah District, Corps of Engineers, Savannah, Georgia, and the office of the Forest Supervisor, Francis Marion National Forest, Columbia, South Carolina.

[FR Doc. 81–28126 Filed 9–28–81; 8:45 am]
BILLING CODE 3410–11–M

Rural Electrification Administration

N.W. Electric Power Cooperative, Inc.; Finding of No Significant Impact

Notice is hereby given that the Rural Electrification Administration (REA) has made a finding of No Significant Impact (FONSI) in connection with proposed financing assistance to the N.W. Electric Power Cooperative, Inc., (NWEPC) of Cameron, Missouri.

The proposed project is to construct 27 km (23 mi) of 161 kV transmission line from the Westbridge Substation in Clinton County to a proposed substation at Ridgely in Platte County, Missouri, continuing to, and terminating at the Hoover Substation. This line will operate at 69 kV until future growth requires 161 kV service. In addition, a 69 kV transmission line will be constructed from the Hoover Substation to a proposed distribution substation, south of Platte City, Platte County, Missouri. The alternatives that were considered for this project were no action, the building of additional distribution systems, the use of underground cables and the selected alternative described above.

NWEPC prepared a Borrower's Environmental Report (BER), and REA prepared an Environmental Assessment (EA) for the proposed project. After an independent evaluation of the BER, EA and information from other sources,

REA has concluded the proposed project will not have a significant impact on the quality of the human environment. The FONSI, EA and BER may be reviewed in the office of the Director, Power Supply Division, Rural Electrification Administration, Room 0230, South Agriculture Building, Washington, D.C. 20250, telephone (202) 382–1400 or at the office of the N.W. Electric Power Cooperative, Inc., Highway 36 West (P.O. Box 312), Cameron, Missouri 64426, telephone (816) 632–2121.

This program is listed in the catalog of the Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 24th day of Sept., 1981.

Jack Van Mark,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 81-28217 Filed 9-28-81; 8:45 am]

BILLING CODE 3410-15-M

Finding of No Significant Impact; Pointe Coupee Electric Membership Corporation, New Roads, La.

Notice is hereby given that the Rural Electrification Administration (REA) has made a Finding of No Significant Impact with respect to proposed financing assistance to Pointe Coupee Electric Membership Corporation (Pointe Coupee) of New Roads, Louisiana, for construction of 34 km (21 mi) of 69 kV transmission line from the proposed Waterloo bulk point in Pointe Coupee Parish to the proposed Erwinville Substation in West Baton Rouge Parish.

REA reviewed a Borrower's Environmental Report (BER) prepared for Pointe Coupee and determined that it represents an accurate assessment of the environmental aspects of the project. Based upon the BER, 1981–82 Annual Work Plan and maps, REA prepared an Environmental Assessment addressing the impacts of the proposed project and concluded that the proposed project would not represent a major Federal action significantly affecting the quality of the human environment.

Threatened and endangered species, important farmlands, cultural resources, wetlands, floodplains and other potential impacts of the proposed project are adequately considered in the BER and the Environmental Assessment. Some pole structures will be located in floodplains and cross prime farmland. The Erwinville Substation will be located on prime farmland. The impact will be minimal.

REA's Finding of No Significant Impact, the Environmental Assessment and Pointe Coupee's BER may be reviewed in or requested from the Office of the Director, Distribution Systems Division, Room 3304 South Building, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382–8848, or at the office of Pointe Coupee Electric Membership Corporation (Mr. Alfred A. Robinson, Manager) P.O. Box 160, New Roads, Louisiana 70736, telephone (504) 638–9333.

This Program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 25th day of September, 1981.

Harold V. Hunter,

Administrator, Rural Electrification Administration.

[FR Doc. 81-28344 Filed 9-28-81; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

Application of Air One, Inc. for a Certificate of Public Convenience and Necessity

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause, 81–9–141, Docket 39891 and fitness investigation of Air One, Inc., Docket 40051.

SUMMARY: The Board is issuing an order in which it tentatively finds and concludes that it is consistent with the public convenience and necessity to grant the application of Air One, Inc., for a certificate authorizing the air transportation of persons, property and mail between and among 16 points. Certification is subject to a favorable determination of the applicant's fitness in the Air One Fitness Investigation (Docket 40051), instituted concurrently.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file by October 13, 1981, a statement of objections together with a summary of testimony, statistical data and other material expected to be relied upon to support the stated objections. Such filings shall be served upon all parties listed below.

Persons wishing to file petitions to intervene in the Air One Fitness Investigation shall file their petitions in Docket 40051 by October 13, 1981 and serve such filings on all persons listed below.

ADDRESSES: Objections to the issuance of a final order shall be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C. 20428, in Docket 39891, application of Air One, Inc. for a certificate of public convenience and necessity.

In addition, copies of such filings should be served on: Air One, Inc.; the Mayors of Los Angeles, California; Atlanta, Georgia; Memphis, Tennessee; St. Louis, Missouri; Kansas City, Missouri; New Orleans, Louisiana; Dallas, Texas; Las Vegas, Nevada; Ft. Worth, Texas; Houston, Texas; Denver, Colorado; Chicago, Illinois; Detroit, Michigan; Indianapolis, Indiana; Miami, Florida; Washington, D.C.; New York, New York; and Newark, New Jersey; the managers of Wayne County Airport; Port Authority of New York and New Jersey; O'Hare International Airport; Miami International Airport; Memphis Airport; Moisant International Airport; National Airport; Dulles Airport; Baltimore/Washington International Airport; Lamber-St. Louis International Airport; Hartsfield International Airport; Indianapolis Airport; Stapleton International Airport; Las Vegas Airport; Houston International Airport; and Los Angeles International Airport; the State Department of Transportation or Aeronautics Commissions of California, Nevada, Missouri, Texas, Georgia, New Jersey, Illinois, Michigan, Tennessee, Indiana, Florida, and New York, the Governor of Colorado, and the Federal Aviation Administration.

Service will also be required on any other person filing objections.

FOR FURTHER INFORMATION CONTACT: Phyllis C. Solomon, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673–5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 81–9–141 is available from our Distribution Section, Room 100, 1825 Connecticut Ave., NW, Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 81–9–141 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: September 23, 1981.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-28214 Filed 9-28-81; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Scripps Institute of Oceanography; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: a. Name: Dr. Daniel P. Costa.

b. Address: Scripps Institute of Oceanography (P227C), La Jolla, California 92093.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Northern elephant seals *(Mirounga angustirostris)*, 60.

4. Type of Take: Thirty lactating females and their pups (60 animals) will be injected with radioisotopic tracers to measure rates of water, electrolyte, and energy transfer. Blood samples and body weights will be taken. Pups will be restrained while blood sampled and weighed. Cows will be chemically immobilized prior to blood sampling and weighing. All animals will be visually tagged with paint or peroxide bleach. In addition, each cow will be milk sampled during each weighing and have a maximum depth recorder attached to the hind flipper and a radio transmitter attached to the flipper or head. Ten (10) cow/pup pairs will be taken each year and sampled up to four (4) times each.

5. Location of Activity: Ano Nuevo State Park, San Mateo, California.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: September 24, 1981.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 81-28224 Filed 9-28-81; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Levels for Certain Man-Made Fiber Apparel Products from the Republic of Korea

September 25, 1981.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: (1) Increasing from 1,678,668 dozen to 1,838,541 dozen the import restraint level established for Category 640 pt. (man-made fiber shirts, other than dress shirts), produced or manufactured in the Republic of Korea and exported during the agreement year which began on January 1, 1981; and

(2) Decreasing from 4,320,773 dozen to 4,160,900 dozen the import restraint level established for Category 640 pt. (man-made fiber dress shirts), produced or manufactured in the Republic of Korea and exported during the 1981 agreement year.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506) December 24, 1980 (45 FR 85142) and May 5, 1981 (46 FR 25121).)

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea provides that the specific limits for man-made fiber textile products in Category 640 (dress shirts) or Category 640 (other than dress shirts) may be exceeded by an amount up to 10 percent of the specific limit for one part of the category, provided the specific limit for the other part of the category is decreased by an equal amount.

EFFECTIVE DATE: September 29, 1981.

FOR FURTHER INFORMATION CONTACT: Bill Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On December 30, 1980, there was published in the **Federal Register** (45 FR 85811) a letter dated December 23, 1980 from the Chairman, Committee for the Implementation of Textile Agreements, to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, including man-made fiber textile products in Category 640, produced or manufactured in the Republic of Korea, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1981 and extends through December 31, 1981. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the levels of restraint established for man-made fiber textile products in Category 640 during the agreement year which began on January 1, 1981.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

September 25, 1981.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On December 23, 1980, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in certain specific categories, produced or manufactured in the Republic of Korea and exported to the United States during the agreement year which began on January 1, 1981, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Government of the United States and the Republic of Korea, which provide, in part, that: (1) Within the aggregate and applicable group limits, specific levels of restraint may be adjusted by designated percentages; (2) these same levels may be adjusted for carryover and

Continued

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1978, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of January 6, 1977, you are directed to prohibit, effective on September 29, 1981, and for the twelve-month period begining on January 1, 1981 and extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 640 in excess of the following adjusted levels of restraint:

Category	Adjusted 12-month level of restraint [1]
640 pt.[2]	1,838,541 dozen.
640 pt.[3]	4,160,900 dozen.

[1] The levels of restraint have not been adjusted to account for any imports after December 31, 1980.
[2] In Category 640, all T.S.U.S.A. number except 380.0455, 380.8431, and 380.8433.
[3] In Category 640, only T.S.U.S.A. numbers 380.0455, 380.8431 and 380.8433.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of man-made fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textiles Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 81-28228 Filed 9-28-81; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting:
15 October 1981
16 October 1981

Times:
0830-1700 hours, 15 October 1981 (Closed)
0830-1500 hours, 16 October 1981 (Closed)

Place: The Pentagon, Washington, DC

Proposed Agenda: The Army Science Board Ad Hoc Sub-Group on Manning Army Systems will meet to present and receive briefings. This meeting will be closed to the public in accordance with Section 552(b)(c) of Title 5, U.S.C., specifically subparagraph (1) thereof. The classified and non-classified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Staff may be contacted for further information.

Roger W. Mickelson,

Colonel, GS, Executive Director.

[FR Doc. 81-28229 Filed 9-28-81; 8:45 am]

BILLING CODE 3710-05-M

Department of the Army; Corps of Engineers

Intent To Prepare Draft Environmental Impact Statement (DEIS) for Permit to Dredge Drainage Canals and Lakes, and Install Fill for Residential and Commercial Development in Orleans Parish, La.

AGENCY: US Army Corps of Engineers.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. Proposed Action. This statement will analyze work proposed in a permit application submitted by New Orleans East, Inc. This work will consist of the construction of approximately 72,500 linear feet of new canals and the enlargement of 16,000 linear feet of existing canals and two lakes. The resulting 14,030,000 cubic yards of dreged material will be deposited in wetland areas. The proposed project area consists of approximately 9,773 acres of leveed land, the majority of which is considered wetlands even though the area is within the existing hurricane protection levee system. Completion of the project will allow for the area to be drained for residential, commercial, and light industrial development. The applicant estimates that the proposed residential development will consist of 33,000 to 51,000 housing units providing housing for 100,000 to 150,000 people. The commercial and light industrial development is expected to provide between 20,000 and 30,000 permanent jobs.

2. Alternatives. In addition to the no action alternative, the DEIS will address other areas within metropolitan New Orleans where the applicant's proposed project could take place. These areas will include: (a) West Bank, Jefferson Parish, (b) St. Bernard Parish, (c) St. Charles Parish, (d) Slidell, St. Tammany Parish, (e) Mandeville-Covington, St. Tammany Parish, and (f) Algiers Point, Orleans Parish.

3. Scoping Process. a. The project, as proposed by the applicant, has been discussed in informal meetings attended by representatives of Department of the Interior—US Fish and Wildlife Service, Department of Commerce—National Marine Fisheries Service, Department of Defense—US Army Corps of Engineers, Louisiana Department of Wildlife and Fisheries, and Louisiana Department of Natural Resources—Coastal Management Section. Additional meetings are expected to be held with representatives of the New Orleans Mayor's Office and with representatives of local and national environmental groups.

b. Significant issues to be addressed in the DEIS include: the current and utlimate environmental values of the 9,773 acre project site, the potential impacts to the existing drainage system, the impacts of expected economic growth in New Orleans, and the extent of and possible mitigation of vehicular traffic expected to be generated by the proposed project. Additional issues are expected to be brought out during the public scoping meeting scheduled to be held 14 October 1981.

c. No formal assignments have as yet been planned for input into the DEIS by other Federal and state agencies. Nonetheless, informal meetings will continue to be held and communications will be maintained throughout the EIS process.

d. Periodic reviews will be held with various Federal, state, and local agencies; they will be kept apprised of the progress.

4. Scoping Meeting. A public scoping meeting will be held at 1900 (7 p.m.) on Wednesday, 14 October 1981, at the Marion Abramson High School, 5552 Read Road, New Orleans, Louisiana. The meeting will consist of an introduction and a description of the proposed project, EIS process, and scoping process; after which the attendees will be divided into workshop groups, allowing individuals more freedom to input their ideas and concerns. The groups will reassemble and the moderators of each group will make an oral summary of the comment obtained from the workshops. Comments made by individuals in the workshops groups will be recorded, compiled, and analyzed. A summary of the results will be available upon request.

5. Availability. the DEIS is scheduled to be available to the public in September 1982.

carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

ADDRESS: Questions concerning the proposed action and DEIS can be directed to Mr. Glenn C. Lukos at (504) 838–2277 (FTS 687–2277) at the US Army Corps of Engineers, Regulatory Assessment Section (LMNOD–SA), P.O. Box 60267, New Orleans, Louisiana 70160.

Victor A. Landry,

Executive Assistant.

[FR Doc. 81–28198 Filed 9–28–81; 8:45 am]

BILLING CODE 3710–84–M

Intent To Prepare Draft Environmental Statement (DES) for Proposed Flood Control Project on Prairie and Silver Creeks in Grand Island, Nebr.

AGENCY: U.S. Army Corps of Engineers, Omaha District.

ACTION: Notice of intent to prepare a DES.

SUMMARY: (1) The proposed Federal action is to provide flood control along Prairie and Silver Creeks in Grand Island, Nebraska.

(2) Alternatives considered include: cleaning out bridge openings, together with training levees; diversion of Dry and Prairie Creeks along, and north of the Burlington Northern Railroad by construction of channels and levees; construct a north-south levee west of U.S. Highway 281 to divert flows to the north and east around Grand Island; raise U.S. Highway 281 to design flow elevations, with no free-board, to serve as a stop-gap measure; and channel and bridge modifications, including a training levee on Silver Creek where it passes under Highway 2 and the Burlington, Northern Railroad.

(3) To date, public involvement has included meetings and discussions with public entities, local planning agencies, and concerned citizen groups. No significant issues have been identified. The project will also comply with the requirements of the Historic Preservation Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, Section 404 of the 1977 Clean Water Act, Executive Order 11988 on Flood Plain Management, and Executive Order 11990 on Wetlands.

(4) A Scoping Meeting will be held on Friday, 23 October 1981 at 10:00 a.m. (CDT) in the Natural Resources District office building, 116 W. 4th Street, Grand Island, Nebraska. The participation of the public and all interested Government agencies is invited.

(5) The Omaha District estimates that the DES will be released for public review by September 1982.

ADDRESS: Questions about the proposed action, DES, or scoping meeting should be directed to Richard Gorton, Chief, Environmental Analysis Branch, Omaha District, CE, 6014 U.S. Post Office and Courthouse, Omaha, Nebraska 68102. Phone: (402) 221–4605.

Dated: September 23, 1981.

John O. Roach,

Department of the Army,

Liaison Officer with the Federal Register.

[FR Doc. 81–28238 Filed 9–28–81; 8:45 am]

BILLING CODE 3710–62–M

DEPARTMENT OF EDUCATION

National Commission on Excellence in Education; Meeting

AGENCY: National Commission on Excellence in Education.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule of a first meeting of the National Commission on Excellence in Education. This notice also describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: October 9, 1981 (9:30 a.m. until 5:00 p.m.); October 10, 1981 (9:00 a.m. until 12:00 noon) *tentative.*

LOCATION: Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Milton Goldberg, Executive Director, 1200 19th Street, N.W. (202) 254–5750.

The National Commission on Excellence in Education is governed by the provisions of Part D of the General Education Provisions Act (Pub. L. 90–247 as amended; 20 U.S.C. 1233 *et seq.*) and the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix I) which set forth standards for the formation and use of advisory committees. The Commission is established to advise and make recommendations to the nation and to the Secretary of Education. To carry out this mission the Commission is charged with the following responsiblities:

(1) To review and synthesize the data and scholarly literature on the quality of learning and teaching in the nation's schools, colleges, and universities, both public and private, with special concern for the educational experience of teen-age youth;

(2) To examine and to compare and contrast the curricula, standards, and expectations of the educational systems of several advanced countries with those of the United States.

(3) To study a representative sampling of university and college admission standards and lower division course requirements with particular reference to the impact upon the enhancement of quality and the promotion of excellence such standards may have on high school curricula and on expected levels of high school academic achievement.

(4) To review and to describe educational programs that are recognized as preparing students who consistently attain higher than average scores in college entrance examinations and who meet with uncommon success the demands placed on them by the nation's colleges and universities.

(5) To review the major changes that have occurred in American education as well as events in society during the past quarter century that have significantly affected educational achievement;

(6) to hold hearings and to receive testimony and expert advice on efforts that could and should be taken to foster higher levels of quality and academic excellence in the nation's schools, colleges, and universities;

(7) To do all other things needed to define the problems of and the barriers to attaining greater levels of excellence in American education; and

(8) To report and to make practical recommendations for action to be taken by educators, public officials, governing boards, parents, and others having a vital interest in American education and a capacity to influence it for the better.

The meeting of the Commission is open to the public. The proposed agenda incudes:

Swearing-in/Members
Remarks by Secretary of Education
Discussion of Charter
Task for the Commission
Discussion/Organization of Commission

The public is being given less than fifteen days notice of this meeting because the Chairman is out of the country and a meeting location in Washington has not been selected. Following this initial meeting of the Commission, there will be ample ntoice of future meetings.

Records are kept of all Commission proceedings, and are available for public inspection at the office of the National Commission on Excellence in Education, 1200 19th Street, N.W. from the hours of 8:00 to 5:00.

Dated: September 24, 1981.

Donald J. Senese,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 81–28113 Filed 9–28–81; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreement involve approval of the following sales: Contract Number S–EU–694, to EURATOM, Karlshuhe, Federal Republic of Germany, 250 milligrams of thorium–230, to be used for preparation of sources for Moessbauer spectroscopy of protactinium–231. The sources will be irradiated to produce thorium–231. Contract Number S–EU–698, to Kernforschungszentrum Karlshuhe Gmbh, Federal Republic of Germany, 0.5 millicuries of plutonium–236 for use as a standard for radiochemical medical research.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: September 22, 1981

Fred McGoldrick,

Deputy Director, Office of Nuclear Affairs International Programs.

[FR Doc. 81-28103 Filed 9-28-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 4658-000]

Eugene J. M. McFadden; Application From Exemption From Licensing of a Small Hydroelectric Project of 5 Megawatts or Less

September 18, 1981.

Take notice that the Eugene J. M. McFadden filed with the Federal Energy Regulatory Commission on May 13, 1981, an application for exemption for it's McFadden Farm Project No. 4658 from all or part of Part I of the Federal Power Act pursuant to 18 CFR Part 4 Subpart K (1980) implementing in part section 408 of the Energy Security Act of 1980.[1] The proposed project would be located on the East Fork of Russian River in Mendocino County, California. Correspondence with the Applicant should be directed to: Mr. Eugene J. M. McFadden, McFadden Farm, Potter Valley, California 95469.

Project Description. The proposed project would consist of: (1) Reconstruction of an existing breached dam by constructing a 12-foot high and 6-foot long masonry and concrete dam creating negligible impoundment of water; (2) a 75-foot long, 10-foot square penstock; (3) a powerhouse with total installed capacity of 380 kW; (4) a 300-foot long 12.47-kV transmission line inter-connecting with an existing Pacific Gas & Electric substation. The Applicant estimates that the average annual energy output would be 1.87 million kWh.

Purpose of Exemption. An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments. Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for exemption. (A copy of the application may be obtained directly from the Applicant). Comments should be confined to substantive issues relevant to the issuance of an exemption and consistent with the purpose of an exemption as described in this notice. No other formal requests for comments will be made. If an agency does not file comments within 60 days of the date of issuance of this notice, it will be presumed to have no comments.

Competing Applications. Any qualified license Applicant desiring to file a competing application must submit to the Commission, on or before November 9, 1981, either a competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than January 8, 1982. Applications for a preliminary permit will not be accepted. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions To Intervene. Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's rules. Any comments, protest, or petition to intervene must be received on or before November 9, 1981.

Filing and Service of Responsive Documents. Any comments, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for exemption for Project No. 4658. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-27992 Filed 9-28-81; 8:45 am]

BILLING CODE 6450-85-M

[1] Pub. L. 96-294, 94 Stat. 611. Section 408 of the ESA amends *inter alia*, Sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2705 and 2708).

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of August 10 through August 14, 1981

During the week of August 10 through August 14, 1981, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, NW, Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published looseleaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 22, 1981.

Appeals

Robert Dumont, 8/14/81, BFA–0707

Robert Dumont filed an Appeal from a partial denial by the Acting Director for FOI Matters of the ERA's Enforcement Information Division of a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that release of the documents which were initially withheld by the FOI Director under exemption 7A would interfere with enforcement proceedings currently being conducted by the Special Investigations Division of the DOE. Accordingly, the DOE affirmed the FOI Director's determination.

Marathon Oil Company, 8/11/81, DEA–0595

Marathon Oil Company filed an Appeal of an Order for the Redirection of Product which the ERA Region IV Office issued to the firm on July 31, 1979, pursuant to 10 C.F.R. § 211.107(c). The Order directed Marathon to supply the Southland Corporation's North Florida Division with 102,500 gallons of motor gasoline for the month of July 1979. In considering Marathon's Appeal, the DOE determined that the July 31 Order contained insufficient factual findings to support the conclusions which it contained. Accordingly, the Marathon Appeal was granted, and the July 31 Order was rescinded. However, after balancing the equities involved, the DOE determined that it would be inappropriate to order Southland to make restitution for the gasoline which it received pursuant to the July 31 Order.

Mars Oil Company, 8/11/81, BEA–0425

Mars Oil Company filed an Appeal seeking rescission of an Assignment Order. The Order found that a retail motor gasoline outlet operated by a competitor of Mars was entitled to an assignment of a base period volume of motor gasoline as a "new" retail outlet under DOE regulations. In considering the Appeal, the DOE found that the outlet in question was not a "new" retail outlet and was therefore not eligible to receive an assignment. In reaching this conclusion the DOE pointed out that: (i) the alteration of a retail outlet from full service to high volume gas-only service does not constitute establishment of a "new" outlet; and (ii) the fact that renovations to effect a change in marketing operations extended beyond a six month period, during which time the outlet was closed, could not shield the intention of the parties to continue a gasoline retail sales operation.

Remedial Orders

Burek Oil Company, 8/11/81, DRO–0091

Burek Oil Company objected to a Proposed Remedial Order which the ERA's Region I Office of Enforcement issued to the firm on July 26, 1978. In evaluating the Proposed Remedial Order, OHA found that during the period November 1, 1973 through April 30, 1974, Burek had sold motor gasoline to certain customers at prices which exceeded the maximum lawful prices permitted by the regulations. The DOE therefore concluded that the Proposed Remedial Order should be issued as a final Order. The important issues discussed in the Decision and Order include (1) the use of the "equal application rule," (ii) allowable sequence of cost recovery and (iii) the payment of interest.

F.M. Buxton, 8/12/81, BRO–1004

On March 5, 1980, F.M. Buxton objected to a Proposed Remedial Order which the Southwest Enforcement District of the DOE Economic Regulatory Administration (ERA) issued to the firm on January 18, 1980. In the Proposed Remedial Order, the ERA found that during the period January 1, 1975 through October 31, 1977, Buxton had improperly treated the crude oil which he produced from his Sutter property as "stripper well" crude oil and had therefore sold that oil at prices in excess of the applicable ceiling price levels. After considering Buxton's Statement of Objections, the DOE concluded that the Proposed Remedial Order should be issued as a final Order. The important issues discussed in the Decision and Order include (i) whether the well on the Sutter property produced crude oil and (ii) whether a subsequent inconsistent Ruling rescinds an interpretation regardless of whether the party on whom the Interpretation was served had notice of the Ruling.

HNG Oil Company, 8/14/81, DRO–0066

HNG Oil Company objected to a Proposed Remedial Order that was issued to the firm by ERA's Region VI Office of Enforcement on June 7, 1978. In the PRO the Office of Enforcement determined that HNG had sold crude oil produced from four properties operated by the firm at prices that exceeded the applicable ceiling price levels. In the present proceeding, the DOE concluded that HNG's Statement of Objections be denied. Important issues discussed in the Decision include (1) the relevance of mode of delivery to the applicability of a posting to a field; (2) operator accountability for overcharges occurring in the first sale of crude oil when the owners were paid directly by the purchaser; and (3) the requisite circumstances for involving the "separate accounting" exception of Ruling 1977–1.

Koch Industries, Inc., 8/11/81, BRO–1415

Koch Industries, Inc., objected to a Proposed Remedial Order issued to the firm on November 21, 1980, by the Office of Special Counsel. In the Proposed Remedial Order, the Office of Special Counsel found that Koch had violated 10 C.F.R. Part 211 by refusing to supply two retail motor gasoline outlets of which it was the base period supplier during August 1979 through August 1980, and in October of 1980. Contrary to the firm's objections, the DOE found that Koch was the base period supplier of the outlets and that the outlets were entitled to receive allocations of motor gasoline from Koch. The DOE therefore rejected Koch's objections and determined that it was appropriate that Koch supply the two outlets with the dispute volumes of motor gasoline at the prices which prevailed during the time of the violation. The important issues considered in the Decision and Order include (1) whether the right to an allocation can be terminated by a private contractural agreement; (ii) whether the two retail outlets constituted new outlets; and (iii) whether the DOE could order the volumes of motor gasoline to be returned at prices below current market prices.

Lowe Oil Company, 8/10/81, DRO–0215

Lowe Oil Company filed a Statement of Objections to a Proposed Remedial Order which the ERA Region VII Office of Enforcement issued to the firm on April 17, 1979. In considering Lowe's objections to the PRO, the DOE determined that Lowe had failed to demonstrate that it had lowered its prices solely to make restitution for previous overcharges. However, the DOE also concluded that Lowe should not be required (1) to pay restitution to firms which had not paid prices in excess of Lowe's maximum lawful selling prices, (2) to conduct a self-audit for the period May 1, 1974 through August 31, 1976, and (3) to maintain records for future transactions. Accordingly, Lowe's Statement of Objections was granted in part. In addition, the ERA's Motion for Modification of the Interest Provisions of the PRO was granted in part.

Requests for Exception

Beacon Oil Company, 8/12/81, BEE–1647

Beacon Oil Company filed an Application for Exception from the provisions of 10 CFR § 211.67 in which the firm sought entitlements exception relief for the period January 1, 1981 through January 27, 1981. In considering Beacon's request, the DOE determined that the firm failed to file its exception request in a timely manner and was therefore ineligible for prospective relief under the *Delta* standards. The DOE also found that the firm did not satisfy the agency's standards for approving retroactive exception relief. Accordingly, Beacon's request was denied.

Gene L. Bolin, d.b.a. Gene Bolin's Chevron Station, 8/10/81, BEE-1672

Gene L. Bolin d.b.a. Gene Bolin's Chevron Station filed an Application for Exception from the provisions of the DOE price regulations which required him to set prices at his motor gasoline retail outlet by applying the "acquired entity rule." In considering Bolin's request, the DOE determined that the unofficial agency advice when Bolin received at the time he acquired his outlet was sufficiently confusing that he could not reasonably have been expected to apply the "acquired entity rule" properly. In addition, the DOE found that Bolin would suffer a serious financial hardship if he were required to calculate his prices under the "acquired entity rule." Accordingly, the DOE concluded that Bolin should be granted exception relief permitting him retroactively to increase his maximum lawful selling prices during the period November 28, 1973 through February 28, 1977 in order to generate $47,343.85 in additional revenues.

Hunt Oil Company, 8/12/81 BEE-0544

Hunt Oil Company filed an Application for Exception from the provisions of 10 CFR §§ 212.182 and 212.183, in which the firm sought permission to use the second calendar quarter of 1973, instead of May 1973, as the base period for purposes of determining the firm's average permissible markup in resales of crude oil. In considering the request, the DOE found that due to unusual inventory losses during May 1973, Hunt had an unusually low per barrel net margin during that month. The DOE therefore determined that Hunt was experiencing a gross inequity which warranted the approval of prospective exception relief. However, the DOE determined that retroactive relief was inappropriate because Hunt had waited almost two years after the promulgation of the rule which established May 1973 as the base peirod for crude oil resales before applying for exception relief. In addition, the DOE determined that Hunt would not experience an irreparable injury in the absence of retroactive exception relief.

Texaco, Inc., 8/10/81, BEE-1556

On December 9, 1980, Texaco, Inc. (Texaco) filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D in which the firm sought to recertify, effective June 1, 1979, the crude oil produced from certain marginal properties. In considering the request, the DOE found that the firm had failed to meet the requirements for exception relief set forth at 10 CFR § 205.55(b). Accordingly, exception relief was denied.

Motion for Modification and/or Rescission

Kern County Refinery, Inc., 8/14/81, BYR-0134, BES-0159

Kern County Refinery, Inc., filed a Motion for Reconsideration of *Kern County Refinery, Inc.*, 8 DOE ¶ 82,566 (1981), in which the DOE reviewed the level of entitlements exception relief that Kern received in its 1979 fiscal year. In the Motion for Reconsideration, Kern contended that there were several errors in the Kern decision and that correction of those errors would reduce the amount of the additional entitlements purchase requirement that the Kern decision had imposed on the firm. In considering the firm's Motion, the DOE determined that two of the corrections suggested by the firm were appropriate and that an additional correction to the manner of computing the appropriate level of entitlements exception relief for the firm's 1979 fiscal year was necessary. Among the important issues considered in the decision are: (i) the appropriateness of adjusting a firm's reported profit to exclude the effect of a change in accounting procedure and (ii) the manner in which the DOE computes the level of exception relief to which a firm is entitled under the *Delta* standards when the *Delta* standards have been modified during the course of a firm's fiscal year.

Motion for Discovery

Exxon Company, U.S.A., 8/13/81, BRD-0177

Exxon Company, U.S.A. filed a Motion for Discovery in connection with its Statement of Objections to a Proposed Remedial Order issued to it by the Office of Special Counsel (OSC) on May 14, 1979. The PRO alleged that during the period February through May 1974 Exxon improperly included in its cost banks $3,952,000 of premium incentives for benzene and toluene calculated pursuant to 10 CFR § 212.82(f)(3). In its Motion for Discovery, Exxon requested that it be provided with all records prepared or used by the DOE and its predecessor agencies in connection with the rulemaking proceedings which amended the special benzene and toluene price rules in 10 CFR §§ 212.83(c)(2) and 212.82(f)(3) in February 1974, that it be provided with all records available to the DOE and its predecessors that interpret, construe, or explain the provisions of these regulations and that OSC admit or deny 37 statements concerning the factual and legal issues in the enforcement proceeding. The DOE determined that the Motion for Discovery should be denied in its entirety, except for one request for admission to which OSC did not object. Exxon's request for material which provided the record for the rulemakings was deneid on the grounds that administrative record discovery was not appropriate solely to ascertain the meaning of a regulation. Exxon's request for contemporaneous constructions of the benzene and toluene pricing regulations was denied because the regulations were determined not to be ambiguous. All contested portions of Exxon's requests for admission were also denied, because the requests sought admissions either on solely legal matters on which OSC's position was known or on factual matters not in dispute.

Motion for Evidentiary Hearing

Caulkins Oil Company, 8/12/81, BRH-1405

Caulkins Oil Company filed a Motion for Evidentiary Hearing in connection with its Statement of Objections to a Proposed Remedial Order which was issued to it by the ERA's Rocky Mountain District Office of Enforcement on January 18, 1981. In its Motion, Caulkins requested that it be permitted to present the testimony of its treasurer regarding certain factual assertions in its Statement of Objections. The DOE found that a material factual dispute existed only as to the firm's contention that its 1974 sales records substantially reflected its crude oil production from a certain lease. The DOE also determined that the testimony of the firm's treasurer would substantially assist it in making findings of fact because the agency's conclusions may depend in large part upon the credibility of the witness's testimony concerning the factual conclusions that may be drawn from Caulkin's sales records. Accordingly, Caulkin's Motion for Evidentiary Hearing was granted with respect to this single issue and denied in all other respects.

Supplemental Order

Edgington Oil Co., Inc., 8/12/81, BEX-0219

The Department of Energy issued a Supplemental Order rescinding a prior Interim Order in which it had implemented relief that had been tentatively granted to Edgington Oil Company, Inc. in a March 10, 1981 Proposed Decision and Order. This action was taken because the DOE had issued a Supplemental Order tentatively denying the relief it had proposed to grant in the March 10, 1981 Proposed Decision and Order.

Dismissals

The following submissions were dismissed without prejudice:

Name and Case No.

DOE, Central Enforcement District, BER-0153
Gene L. Bolin, d.b.a. Gene Bolin's Chevron, DRO-0082
Mallard Resources, Inc., BRO-1277
Standard Oil Co. (IN), DEE-8244

[FR Doc. 81-28100 Filed 9-28-81; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Week of September 7 Through September 11, 1981

During the week of September 7 through September 11, 1981, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person received actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to

contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, NW, Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 23, 1981.

Bettis, Boyle, and Stovall, Graham, Texas, BEE–1679

Bettis, Boyle and Stovall filed an Application for Exception from the requirement that it prepare and submit Form EIA–23. On September 11, 1981, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 81-28101 Filed 9-28-81; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of August 31 Through September 4, 1981

During the week of August 31 through September 4, 1981, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 C.F.R. Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the office of Hearings and Appeals, Room B–120, 2000 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 23, 1981.

Helcher Oil Company, 9/1/81, BEE–1673

On July 20, 1981, Helcher Oil Company filed an Application for Exception from the reporting requirements of Form EIA–9A ("No. 2 Distillate Price Monitoring Report"). The exception request, if granted, would relieve the firm of the obligation to file the form with the Energy Information Administration. On September 1, 1981 the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be denied.

[FR Doc. 81-28102 Filed 9-28-81; 8:45 am]

BILLING CODE 6450-01-M

Objection To Proposed Remedial Order Filed; Week of September 7 Through September 11, 1981

During the week of September 7 through September 11, 1981, the notice of objection to a proposed remedial order listed in the Appendix of this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR § 205.194 on or before October 19, 1981. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 23, 1981.

Everett Street Exxon, Alameda, California, BRO–1645

On September 9, 1981, W.V. Ullner (dba Everett Street Exxon), 2501 Santa Clara Avenue, Alameda, California 94501, filed a Notice of Objection to a Proposed Remedial Order which the DOE Western District Office of Enforcement issued to the firm on March 31, 1981. In the PRO the Western District found that during the audit period the firm had been charging prices in the retail sale of motor gasoline which were in excess of the maximum lawful selling price allowed by 10 C.F.R. Part 212.

According to the PRO the Everett Street Exxon violation resulted in $5,154.73 of overcharges.

[FR Doc. 81-28099 Filed 9-28-81; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Central Valley Project Order Confirming and Approving an Extension of Power Rates on an Interim Basis

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of an extension of power rates on an interim basis—Central Valley Project, California.

SUMMARY: Notice is given of Rate Order No. WAPA–10 of the Assistant Secretary for Conservation and Renewable Energy extending power rates on an interim basis for power marketed by the Western Area Power Administration (Western) from the Central Valley Project (CVP), California.

FOR FURTHER INFORMATION CONTACT:

James A. Braxdale, Office of Power Marketing Coordination, CE–91, Department of Energy, 12th and Pennsylvania Avenue, NW., Room 3349, Washington, DC 20461, (202) 633–8338

Conrad K. Miller, Chief, Rates & Statistics Branch, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, Colorado 80401, (303) 231–1535

David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, Department of Energy, 2800 Cottage Way, Sacramento, California 95825, (916) 484–4251

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204–33, effective January 1, 1979 (43 FR 60636, December 28, 1978), the Secretary of Energy delegated to the Assistant Secetary for

Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis. Due to a Department of Energy organizational realignment on February 24, 1981, this authority of the Assistant Secretary for Resource Applications has been transferred, effective March 19, 1981, to the Assistant Secretary for Conservation and Renewable Energy. The same delegation order delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation.

Pursuant to the delegation order, the Assistant Secretary for Resource Applications issued Rate Order No WAPA–2 (44 FR 57962, October 9, 1979) confirming and approving on an interim basis, effective November 1, 1979, Rate Schedules CV–F4 and CV–P3 for power marketed by Western from the CVP. The rates were to remain in effect for a period of 12 months unless the period was extended or until the FERC confirmed and approved them, or substitute rates, on a final basis. The rates were submitted to the FERC for confirmation and approval on a final basis on October 2, 1979. By Rate Order No. WAPA–5 (45 FR 67442, October 10, 1980), the rates were extended for 12 months, through October 31, 1981.

The FERC has not yet acted on the rates, and the purpose of Rate Order No. WAPA–10 is to extend the power rates for another 12 months (through October 31, 1982) unless further extended or until the FERC confirms and approves them, or substitute rates, on a final basis.

Issued in Washington, DC, September 16, 1981.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

United States of America, Department of Energy, Assistant Secretary for Conservation and Renewable Energy

Order Confirming and Approving an Extension of Power Rates on an Interim Basis (September 16, 1981)

In the matter of: Western Area Power Administration—Central Valley Project Power Rates; Rate Order No. WAPA–10.

Pursuant to section 302(a) of the Department of Energy Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior, under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.*, as amended and supplemented by the subsequent enactments, particularly by section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), for the Bureau of Reclamation were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. Due to a Department of Energy organizational realignment on February 24, 1981, this authority of the Assistant Secretary for Resource Applications has been transferred to the Assistant Secretary for Conservation and Renewable Energy. this rate order is issued pursuant to the amendment of Delegation Order No. 0204–33 to transfer the delegation to the Assistant Secretary for Conservation and Renewable Energy, effective March 19, 1981.

Background

Pursuant to Delegation Order No. 0204–33, on October 2, 1979, the Assistant Secretary for Resource Applications issued Rate Order No. WAPA–2 (44 FR 57962, October 9, 1979) confirming and approving on an interim basis, effective November 1, 1979, Rate Schedules CV–F4 and CV–P3 for power marketed by the Western Area Power Administration's (Western) Central Valley Project (CVP). The rate order stated that the rates ". . .shall remain in effect on an interim basis for a period of 12 months unless such period is extended or until the FERC confirms and approves them, or substitute rates, on a final basis." The rate schedules were submitted to the FERC for confirmation and approval on a final basis by the Assistant Secretary's letter of October 2, 1979. By Rate Order No. WAPA–5 (45 FR 67442, October 10, 1980), the rates were extended for 12 months, through October 31, 1981.

Discussion

The FERC has not yet acted on the CVP power rates submitted to the FERC on October 2, 1979. It appears that unless the rates are extended they will terminate on October 31, 1981.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective November 1, 1981, an extension of existing Rate Schedules CV–F4 and CV–P3. These rates shall remain in effect through October 31, 1982, unless extended, or until the FERC confirms and approves them, or substitute rates, on a final basis.

Issued in Washington, DC, September 16, 1981.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

[Rate Schedule CV–F4 (Supersedes Rate Schedule CV-F3R)]

Central Valley Project, California

Schedule of Rates for Wholesale Firm Power Service

Effective: November 1, 1979.

Available: In the area served by the Central Valley Project.

Applicable: To wholesale firm power customers for general power service supplied through one meter at one point of delivery.

Character and conditions of service: Alternating current, sixty hertz, three phase, delivered and metered at the voltages and points established by contract.

Monthly rate:

Demand charge: $2.00 per kilowatt of billing demand.

Energy charge: 5.11 mills per kilowatt-hour for all energy use up to, but not in excess of, the energy obligation under the power sales contract.

Billing demand: The billing demand will be the highest 30-minute integrated demand established during the month up to, but not in excess of, the delivery obligation under the power sales contract.

Energy obligation: The maximum kilowatt-hour obligation of the United States during the month as established under the power sales contract.

Minimum bill: $2.00 per kilowatt of the effective contract rate of delivery.

Billing for unauthorized overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power and/or energy obligations, such overrun shall be billed at ten times the above rate.

Adjustments

For character and conditions of service: If delivery is made at transmission voltage so that the United States is relieved of substation costs, five percent discount will be allowed on the demand and energy charges.

For tranformer losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased two percent to compensate for transformer losses.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

[Rate Schedule CV–P3 (Supersedes Rate Schedule CV-P2R)]

Central Valley Project, California

Schedule of Rates for Commercial Irrigation and/or Drainage Pumping Service and for Wholesale Firm Power Service When Supplied in Conjunction Therewith

Effective: November 1, 1979.

Available: In the area served by the Central Valley Project.

Applicable: To commercial irrigation customers for their own use for, or for resale for, irrigation and/or drainage pumping and purposes incidental thereto supplied through one meter at one point of delivery, and for the purposes other than irrigation and/or drainage pumping service when supplied in conjunction with the pumping service through the same meter at the same point of delivery.

Character and conditions of service: Alternating current, sixty hertz, three phase, delivered and metered at the voltages and points established by contract.

Monthly rate:

Demand charge: $2.00 per kilowatt of billing demand.

Energy charge: 5.11 mills per kilowatt-hour for all energy use up to, but not in excess of, the energy obligation under the power sales contract.

Billing demand: The billing demand will be the highest 30-minute integrated demand established during the month up to, but not in excess of, the delivery obligation under the power sales contract.

Energy obligation: The maximum kilowatt-hour obligation of the United States during the month as established under the power sales contract.

Minimum bill: None.

Billing for unauthorized overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power and/or energy obligations, such overrun shall be billed at ten times the above rate.

Adjustments

For character and conditions of service: If delivery is made at transmission voltage so that the United States is relieved of substation costs, five percent discount will be allowed on the demand and energy charges.

For tranformer losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased two percent to compensate for transformer losses.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

[FR Doc. 81-28104 Filed 9-28-81; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59065; TSH-FRL-1942-3]

Cerium (IV) Tetramethylheptanedionate; Test Marketing Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person intending to manufacture or import a new chemical substance for a commercial purpose in the United States to submit a premanufacture notice (PMN) to EPA at least 90 days before he commences such manufacture or import. Under section 5(h) the Agency may, upon application, exempt any person from any requirement of section 5 to permit such person to manufacture or process a chemical for test marketing purposes. Section 5(h)(6) requires EPA to issue a notice of receipt of any such application for publication in the **Federal Register**. This notice announces receipt of an application for an exemption from the premanufacture reporting requirements for test marketing purposes and requests comments on the appropriateness of granting the exemption.

DATE: The Agency must either approve or deny this application by October 31, 1981. Persons should submit written comments on the application no later than October 14, 1981.

ADDRESS: Written comments to: Document Control Officer (TS-793) Managment Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street SW., Washington, DC 20460, (202-755-5687).

FOR FURTHER INFORMATION CONTACT: Carrie Berlin, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-222, 401 M Street SW., Washington, DC 20460. (202-426-8815).

SUPPLEMENTARY INFORMATION: Under Section 5 of TSCA (90 Stat. 2012 (15 U.S.C. 2604)), any person who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA before the manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the inventory of existing chemical substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** on May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

Section 5(a)(1) requires each PMN to be submitted in accordance with section 5(d) and any applicable requirement of chemical substances that are subject to testing rules under section 4. Section 5(b)(2) requires additional information in PMN's for substances which EPA, by rules under section 5(b)(4), has determined may present unreasonable risks or injury to health or the environment.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon applicaton, to exempt persons from any requirement of section 5(a) or section 5(b) to permit the persons to manufacture or process a chemical substance for test marketing purposes. To grant such an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and the agency must publish a notice of its disposition in the **Federal Register**. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

Under section 5(h)(6), EPA must publish in the **Federal Register** a notice of receipt of an application under section 5(h)(1) immediately after the Agency receives the application. The notice identifies and briefly describes the application (subject to section 14 confidentiality restrictions) and gives interested persons an opportunity to comment on it and whether EPA should grant the exemption. Because the Agency must act on the application within 45 days, interested persons should provide comments within 15 days after the notice appears in the **Federal Register.**

EPA has proposed Premanufacture Notification Requirements and Review Procedures published in the **Federal Register** of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764) containing proposed premanufacture rules and notice forms. Proposed 40 CFR 720.15 (44 FR 2268) would implement section 5(h)(1) concerning exemptions for test marketing and includes proposed 40 CFR 720.15(c) concerning the section 5(h)(6) **Federal Register** notice. However, these requirements are not yet in effect. In the meantime, EPA has published a statement of Interim Policy published in the **Federal Register** of May 15, 1979.

TME 81-35

Close of Review Period. October 31, 1981.

Manufacturer's Identity. Claimed confidential business information. Organization information provided: Manufacturing site—Pacific Region

Specific Chemical Identity. Cerium (IV) tetramethylheptanedionate.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the final use of the PMN substance will be in the transportation industry.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Black crystals, maroon when finely divided.

Weight—873.18.

Melting Point—276–278°C.

Solubility—Insoluble in water. Slightly soluble in alcohol. Soluble in chloroform, toluene, benzene, gasoline and acetone.

Sublimation.

Temperature—144–200°C at 0.1 Torr.

Toxicity Data. Summaries of literature searches for similar and related compounds were submitted in lieu of new toxicity studies.

Exposure. The submitter states that at submitter-controlled sites 4 to 6 workers may have dermal exposure for a maximum of 5 hr/day, 60–90 days/yr, at an average concentration of 1–10 ppm and a peak of 100 ppm during processing; at use sites, an average of 3–5 workers may have dermal exposure for 2 hr/day, 50 days/yr at an average concentration of 4 ppm with an average peak of 40 ppm; and during disposal, 1–2 workers may have dermal exposure 1 hr./da., 5–10 days/yr at an average concentration of 1–10 ppm and a peak of 100 ppm. At a site not controlled by the submitter, 1–2 people may have dermal and inhalation exposure for 2 hr/day, 30 days/yr.

Environmental Release/Disposal. The manufacturer states that less than 10 kg per year will be released to the air, land, or water at any site.

Dated: September 18, 1981.

Woodson W. Bercaw,

Acting Director for Management Support Division.

[FR Doc. 81-28152 Filed 9-28-81; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-51320; TSH-FRL-1942-4]

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 statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of four PMN's and provides a summary of each.

DATE: Written comments by: PMN 81–458, 81–459, 81–460, and 81–461, November 14, 1981.

ADDRESS: Written comments, identified by the document control number "[OPTS–51320]" 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–409, 401 M St., SW., Washington, D.C. 20460, (202–755–5687).

FOR FURTHER INFORMATION CONTACT:

For PMN No.	Notice manager	Telephone	Room No.
81–458	Rachel Diamond.	202–426–2601	E–222.
81–459	Rachel Diamond.	202–426–2601	E–222.
81–460	George Bagley.	202–426–2601	E–210.
81–461	Carrie Berlin	202–426–8815	E–222.

Mail address of notice managers: Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMN's received by EPA:

PMN–81–458

Close of Review Period. December 14, 1981.

Manufacturer's Identity. Nalco Chemical Company, 2901 Butterfield Road, Oak Brook, IL 60521.

Specific Chemical Identity. Monoethanolamine.

Use. The manufacturer states that the PMN substance will be used as a sequestrant.

Production Estimates. The manufacturer states that 40,000 lbs. will be produced annually.

Physical/Chemical Properties

Appearance—Clear, amber liquid.

pH (neat)—9.2.

Specific gravity—1.33@60°F.

Boiling point—> 100°F.

Flash point—None.

Viscosity—619 cps@60°F.

7-day storage stability—Stable.

Completely soluble in water.

Toxicity Data. The manufacturer states that the toxicity of the substance is judged to be negligible.

Exposure. The manufacturer states that typically 10 workers will be involved in the manufacture of the substance. At a given application site, 10 individuals will have potential contact.

Environmental Release/Disposal. The manufacturer states that the substance will be disposed of at plant facilities in accordance with existing regulations.

PMN 81–459

Close of Review Period. December 14, 1981.

Importer's Identity. Naarden International USA, Inc., 919 Third Avenue, New York, NY 10022.

Specific Chemcial Identity. 2,2-dimethylbicyclo[2.2.1] heptane-3-carboxylic acid, methylester.

Use. The importer states that the PMN substance will be used as an aroma chemical to be used in fragrance compounds.

IMPORT ESTIMATES

	Kilograms per year maximum
1st year	100
2d year	800
3d year	1,500

Physical/Chemical Properties

Appearance—Liquid.

Boiling point—About 80°C@3 mm/Hg.

Flash point (closed cup)—93.5°.

Solubility water—< 1 g/1.

Alcohol 80% @ 20°C—1:1.

Density—

$d\frac{20}{20} = 1.008\text{-}1.010$.

Refractive index—

$n\frac{20}{D} = 1.468\text{-}1.469$.

Color—Colorless.

Toxicity Data

Acute oral toxicity LD_{50} (rat)—> 5 mg/kg.

Skin irritation—Moderately irritating.

Eye irritation—Slightly irritating.

Ames salmonella—Non-mutagenic.

Skin sensitization (guinea pig)—Non-sensitive.

Exposure. The importer states that exposure may occur only when the product is used for compounding. Maximum concentration of fumes is 1-10 parts per million (ppm).

Environmental Release/Disposal. The importer states that release would only result from an accidental spill. Disposal is possible by incineration.

PMN 81–460

Close of Review Period. December 14, 1981.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemcial Identity. Claimed confidential business information. Generic name provided: Substituted heteropolycycle.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used as a minor component of a formulation used by a limited number of specialized customers.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	50	100
2d year	0	300
3d year	0	400

Physical/Chemical Properties

Solubility water—< 0.1%.
Octanol—0.1-1.0%.
Melting point—> 200°C.

Toxicity Data

Acute oral toxicity LD_{50} (rat)—900 to 1,100 mg/kg.
Acute dermal toxicity LD_{50} (rat)—> 1,000 mg/kg.
Skin irritation (rabbit)—Slight.
Eye irritation (rabbit)—Moderate.

Exposure. The manufacturer states that during manufacture and processing, up to 15 people may have dermal and inhalation exposure for a maximum of 1.5 hrs/day, 15 days/yr during manual transfer operations.

Environmental Release/Disposal. The manufacturer states that 0-3 kg/yr may be released to water. Disposal will be by incineration and biological treatment system.

PMN 81-461

Close of Review Period. November 22, 1981.

Importer's Identity. Duolite International, Inc., 800 Chestnut Street, Redwood City, CA 94063.

Specific Chemical Identity. Benzene-methanamine, ar-ethenyl-N-methanophosphoric, disodium salt, polymer with diethernylbenzene.

Use. The importer states that the PMN substance will be used in selective removal of multivalent cations from monovalant cation-containing solutions.

Import Estimates

	Kilograms per pound, year	
	Minimum	Maximum
1st year	7,000	27,000
2d year	20,000	54,000
3d year	34,000	100,000

Physical/Chemical Properties

Appearane—Spherical, beige-colored beads.
Specific gravity ($H_2O=1$)—About 1.12 (Na + form).
Solubility water—Insoluble.
Bulk Density (kg/L)—About 0.75
Particle size (mm)—0.3—1.2.
Ionic form—^{Na} + of PO_3H_2.
Moisture content (%)—60-65.
Chemical resistance—Dilute acids and bases, and common solvents.
Total exchange capacity (eg/L)—1.5.

Toxicity Data. No data were submitted.

Exposure. The importer states that the only route of exposure, although unlikely, would be dermal contact during loading of the holding tank on initial startup, or later during unloading for disposal when the resin becomes exhausted.

Environmental Release/Disposal. No data were submitted.

Dated: September 18, 1981.

Woodson W. Bercaw,

Acting Director for Management Support Division.

[FR Doc. 81-28154 Filed 9-28-81; 8:45 am]

BILLING CODE 6560-31-M

[PP 1G2440/T323 PH-FRL-1942-6]

Glyphosate; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the herbicide glyphosate in or on the raw agricultural commodities cottonseed at 15 parts per million (ppm), and on the liver and kidney of cattle, goats, hogs, horses, poultry, and sheep at 0.5 (ppm).

DATE: These temporary tolerances expire April 24, 1983.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 412E, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (202-557-7066).

SUPPLEMENTARY INFORMATION: Monsanto Co., 1101 17th St. NW., Washington, D.C. 20036 has requested establishment of temporary tolerances for residues of the herbicide glyphosate in or on the raw agricultural commodities cottonseed at 15 ppm; and the liver and kidney of cattle, goats, hogs, horses, poultry, and sheep at 0.5 ppm. These tolerances will permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit (524-EUP-54) which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Monsanto Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire on April 24, 1983. Residues not in excess of the amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates that such revocation is necessary to protect the public health.

As required by Executive Order 12291, EPA has determined that this temporary tolerance is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this temporary tolerance from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j))).

Dated: September 15, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticides Programs.

[FR Doc. 81-28155 Filed 9-28-81; 8:45 am]

BILLING CODE 6560-32-M

[PP 0G2407/T321; PH-FRL-1942-S]

5-Ethoxy-3-(Trichloromethyl)-1, 2,4-Thiadiazole and its Metabolite; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the fungicide 5-ethoxy-3-trichloromethyl-1,2,4-thiadiazole and its monoacid metabolite 3-carboxy-5-ethoxy-1,2,4-thiadiazole in or on corn (field) grain, wheat grain, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep, and milk at 0.05 part per million (ppm); and corn forage and fodder, and wheat forage and straw at 0.1 ppm.

DATE: The temporary tolerances expire on December 31, 1983.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 418, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-7060).

SUPPLEMENTARY INFORMATION: Olin Chemicals, 120 Long Ridge Road, Stamford, CT 06904, has requested establishment of temporary tolerances for residues of the fungicide 5-ethoxy-3-trichloromethyl-1,2,4-thiadiazole and its monoacid metabolite 3-carboxy-5-ethoxy-1,2,4-thiadiazole.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permits 1258-EUP-13 and 1258-EUP-14 which are being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permits with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permits.

2. Olin Chemicals must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

The temporary tolerances expire December 31, 1983. Residues not in excess of these tolerances remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerances. These tolerances may be revoked if the experimental use permits are revoked or if any scientific data or experience with this pesticide indicates that such revocation is necessary to protect the public health.

As required by Executive Order 12291, EPA has determied that this temporary tolerance is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted these temporary toleraces from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of the Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: September 16, 1981.

Douglas D. Camp,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-28153 Filed 9-28-81; 8:45 am]

BILLING CODE 6560-32-M

[AMS-FRL 1943-8; Docket No. A-81-171]

Revised Motor Vehicle Compliance Program; Public Workshop

AGENCY: Environmental Protection Agency.

ACTION: Delay of public workshop.

SUMMARY: On August 31, 1981, EPA announced in the **Federal Register** (46 FR 43734) a public workshop to discuss possible revisions to the motor vehicle compliance program. The hearing date was set for September 30 and October 1, 1981. The Motor Vehicle Manufacturers Association (MVMA) recommended the hearings be postponed to allow additional time to study the issues. This notice announces that the workshop is indefinitely postponed. We will announce another date shortly.

Dated: September 24, 1981.

Kathleen M. Bennett,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 81-28156 Filed 9-28-81; 8:45 am]

BILLING CODE 6561-26-M

[EN-10-FRL-1943-6]

Northern Tier Pipeline Co.; Issuance of PSD Permit

Notice is hereby given that on September 14, 1981, the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit to The Northern Tier Pipeline Company for approval to construct a marine oil terminal and tank farm at Port Angeles, Washington.

This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration (40 CFR Part 52.21) regulations, subject to certain conditions specified in the permit.

Under Section 307(b)(1) of the Clean Air Act, judicial review of the PSD Permit is available *only* by the filing of a petition for review in the Ninth Circuit Court of Appeals within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of the permit are available for public inspection upon request at the following location: EPA, Region 10, 1200 Sixth Avenue, Room 11C, M/S 521, Seattle, Washington 98101.

Dated: September 15, 1981.

John R. Spencer,

Regional Administrator.

[FR Doc. 81-28150 Filed 9-28-81; 8:45 am]

BILLING CODE 6560-38-M

FEDERAL MARITIME COMMISSION

[Docket No. 81-56]

Belco Petroleum Corp. v. Compania Peruana de Vapores; Filing of Complaint and Assignment

Notice is given that a complaint filed by Belco Petroleum Corporation against Compania Peruana de Vapores was served September 18, 1981. Complainant alleges that respondent has subjected it to payment of rates for ocean transportation in violation of section 18(b)(3) of the Shipping Act; 1916.

This proceeding has been assigned to Administrative Law Judge Wiliam Beasley Harris. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the direction of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 81-28033 Filed 9-28-81; 8:45 am]

BILLING CODE 6730-01-M

Knutsen Line Joint Service Agreement; Cancellation

Filing party: Eliot J. Halperin, Esquire, Graham & James, 1050 17th Street NW., Washington, D.C. 20036.

Agreement No. 7632.

Summary: On September 15, 1981, the Commission received notice of the termination of the parties to Knutsen Line in Agreement No. 7623. The agreement will be cancelled effective September 15, 1981, the date the notice of termination was received by the Commission.

Dated: September 23, 1981.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 81-28106 Filed 9-28-81; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 81-57]

Tractors and Farm Equipment Limited v. Waterman Steamship Corp. and Cosmos Shipping Co., Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Tractors and Farm Equipment Limited against Waterman Steamship Corporation and Cosmos Shipping Co., Inc. was served September 18, 1981. Complainant alleges that respondents have violated 46 U.S.C. 812 and 46 U.S.C. 841b in connection with a shipment of cargo.

This proceeding has been assigned to Administrative Law Judge Paul J. Fitzpatrick. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 81-28032 Filed 9-28-81; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10327; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before October 19, 1981. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No. T-3305-1.

Filing party: Mr. Richard L. Landes, Deputy City Attorney, Offices of the City Attorney of Long Beach, Harbor Administration Building, P.O. Box 570, Long Beach, California 90801.

Summary: Agreement No. T-3305-1, between the City of Long Beach (City) and Koppel, Inc. (Koppel), modifies the parties' basic agreement which provides for the 15-year lease to Koppel of approximately 117,596 sq. ft. of space at Pier A, Long Beach, California, to be used as a bulk commodity terminal facility and elevator, including the assembling, storing, handling, loading and unloading of grain and other bulk commodities into and from vessels at the Port.

The purpose of the modification is to delete the office building from the premises and extend the lease term to 22 years and 2 months. The parties agree that Koppel shall not operate a public terminal or furnish wharf, dock, warehouse or other terminal facilities in connection with common carriers by water. Koppel shall have the option to purchase all grain terminal improvements from City during the term of this agreement. koppel shall pay an annual compensation of $1,900,000 through October 31, 1985, with five-year renegotiation provisions included in the agreement. The parties further agree to shift the lease term to a November 1–October 31 fiscal basis and amend the compensation formula.

Agreement No. T-3691-1.

Filing party: John M. Ridlon, General Attorney, Sea-Land Industries, Inc., P.O. Box 900, 10 Parsonage Road, Edison, New Jersey 08818.

Summary: Agreement No. T-3691-1, between Sea-Land Service, Inc. (Sea-Land) and Hanjin Container Lines, Ltd. (Hanjin), modifies the parties' basic agreement whereby Sea-Land agrees to perform container terminal services for Hanjin's container vessels at the Ports of Long Beach and Oakland, California and Seattle, Washington.

The purpose of the modification is to amend Article I of the agreement by deleting the word "solely" and adding the words "that it may", in order that

Hanjin will be able to seek terminal services from any supplier of such services rather than "solely" from Sea-Land, as previously provided in the agreement.

Agreement No. T-3989.

Filing Party: Mr. H. H. Wittren, Assistant Director of Real Estate, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111.

Summary: Agreement No. T-3989, between the Port of Seattle and Pacific Northern Oil Corporation (Pacific), provides for the 15-year lease of 100 lineal feet of a berthing area located between Piers 90 and 91 of the Port of Seattle's Terminal 91 Complex. The premises will be used for the refueling of tugboats, barge loading and discharging and other related activities. As compensation, Pacific shall pay a monthly rental of $1,200, plus applicable port tariff charges. The parties further agree to three-year rental renegotiations.

Agreement No. 93-24.

Filing Party: Mr. Ralph M. Pais, Graham & James, One Maritime Plaza, Suite 300, San Francisco, California 94111.

Summary: Agreement No. 93-24 modifies the basic agreement of the North Europe-United States Pacific Freight Conference by authorizing the Agreement Secretary, Chairman or counsel if authorized by the conference to execute agreement modifications on behalf of the parties. By Order of the Federal Maritime Commission.

Dated: September 23, 1981.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 81-28105 Filed 9-28-81; 8:45 am]

BILLING CODE 6730-01-M

[Docket 81-47]

Maryland Port Administration Interpretation of the Term "Cargo" in FMC Lease No. T-3753; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Docket No. 81-47 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required. The Maryland Port Administration (MPA) has petitioned the Commission for a declaratory order finding the MPA is correct in its interpretation of the term "cargo" in FMC Lease No. T-3753. The action involves no change in cargo handling operations or volume of cargoes.

This Finding of No Significant Impact (FONSI) will become final on or before October 19, 1981 unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment is available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 81-28145 Filed 9-28-81; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 81-50]

Per-Container Rates—Tariff Filing Requirements Applicable to Carriers and Conferences in the Foreign Commerce of the United States—Consideration of Petition Filed by Sea-Land Service, Inc.; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Docket No. 81-50 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required. The Commission proposes to amend its tariff filing regulations to provide for the filing of per-container rates. This modification is intended to ensure the proper application of rates to cargo moving in containers.

This Finding of No Significant Impact (FONSI) will become final on or before October 19, 1981, unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 81-28147 Filed 9-28-81; 8:45 am]

BILLING CODE 6730-01-M

[General Orders 13 and 38; Docket No. 81-51]

Time Limit for Filing of Overcharge Claims; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commissions's Office of Energy and Environmental Impact has determined that the Commission's decision on Docket No. 81-51 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required. Docket No. 81-51 on Parts 531 and 536—*Time Limit For Filing of Overcharge Claims*, involves a proposed rule that would amend the Commission's tariff filing requirements to prohibit carriers from barring shippers' filing of overcharge claims less than two years after date of shipment.

This Finding of No Significant Impact (FONSI) will become final before October 19, 1981 unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Joseph C. Polking,

Assistant Secretary.

[FR Doc.81-28146 Filed 9-28-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or

gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than October 22, 1981.

A. *Federal Reserve Bank of Kansas City* (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

Farmers Enterprises, Inc., Albert, Kansas (sale of money orders, travelers checks, and U.S. Bonds; Kansas): to engage *de novo* in the activity of selling money orders, travelers checks, and U.S. Bonds. These activities would be performed at an office in Great Bend, Kansas, serving western Barton County, including all of Great Bend, Albert, Olmitz, and Pawnee Rock, Kansas.

B. *Federal Reserve Bank of Dallas* (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

First Mineola Corporation, Mineola, Texas (trust activities; Texas): to engage in trust activities, including acting in a fiduciary capacity to administer estates, to administer and execute trusts, and to execute nominee agreements, and to perform activities of an agency or custodial nature. These activities would be conducted from an office in Mineola, Texas, serving the city of Mineola, Texas and surrounding cities and towns.

C. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

United Bancorp of Arizona, Phoenix, Arizona (mortgage banking, loan servicing, and insurance activities): to engage, through its subsidiary, H. S. Pickrell Company, in making or acquiring, for its own account or for the account of others, loans of all types and other extensions of credit such as would be made by a mortage company; in servicing loans and other extensions of credit for any persons; and acting as broker or agent for the sale, by mail solicitation of credit related life, accident, and health insurance solely in connection with extensions of credit by H. S. Pickrell Company. These activities will be conducted from an office in El Paso, Texas, serving El Paso, Texas, Las Cruces, New Mexico and nearby areas.

D. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, September 22, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28124 Filed 9-28-81; 8:45 am]

BILLING CODE 6210-01-M

Citizens Financial Corp.; Formation of Bank Holding Company

Citizens Financial Corporation, Beaumont, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares, less directors' qualifying shares, of Citizens National Bank of Beaumont, Beaumont, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 15, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 22, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28114 Filed 9-28-81; 8:45 am]

BILLING CODE 6210-01-M

Findlay Bankshares, Inc.; Formation of Bank Holding Company

Findlay Bankshares, Inc., Findlay, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Bank of Findlay, Findlay, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 21, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 22, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28115 Filed 9-28-81; 8:45 am]

BILLING CODE 6210-01-M

Huntsville Bancshares, Inc.; Formation of Bank Holding Company

Huntsville Bancshares, Inc., Huntsville, Missouri, has applied for the Board's approval under section 3 (a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Farmers and Merchants Bank of Huntsville, Huntsville, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than October 22, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 22, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28116 Filed 9-28-81; 8:45 am]

BILLING CODE 6210-01-M

Iuka Bancshares Corporation; Formation of Bank Holding Company

Iuka Bancshares Corporation, Iuka, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of The Iuka State Bank in Iuka, Iuka, Kansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 22, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 22, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28117 Filed 9-28-81; 8:45 am]

BILLING CODE 6210-01-M

Jefferson Bancorp, Inc.; Formation of Bank Holding Company

Jefferson Bancorp., Inc., Louisville, Kentucky, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by converting its subsidiary, Republic Bank and Trust Company, Louisville, Kentucky ("Republic"), into a bank, as defined by section 2(c) of the act, through Republic's acceptance of demand deposits. Republic currently engages in the business of making commercial loans. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 22, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 22, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28118 Filed 9-28-81; 8:45 am]

BILLING CODE 6210-01-M

Kellonto Bankshares Corp.; Formation of Bank Holding Company

Kellonto Bankshares Corporation, Elgin, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Elgin State Bank, Elgin, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 21, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 22, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28119 Filed 9-28-81; 8:45 am]

BILLING CODE 6210-01-M

Mansfield Bancshares, Inc.; Formation of Bank Holding Company

Mansfield Bancshares, Inc., Mansfield, Louisiana, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Mansfield Bank and Trust Company, Mansfield, Louisiana. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 22, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 22, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28120 Filed 9-28-81; 8:45 am]

BILLING CODE 6210-01-M

Northwest Bancorporation of Arkansas, Inc.; Formation of Bank Holding Company

Northwest Bancorporation of Arkansas, Inc., Fayetteville, Arkansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 74 percent or more of the voting shares of Northwest National Bank, Fayetteville, Arkansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 22, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 22, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28121 Filed 9-28-81; 8:45 am]

BILLING CODE 6210-01-M

Ozark Bankshares, Inc.; Formation of Bank Holding Company

Ozark Bankshares, Inc., Ozark, Arkansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Bankstock One, Inc., Ozark, Arkansas, and, indirectly, 80 percent or more of Bank of

Ozark, Ozark, Arkansas, ("Bank") and to directly acquire 3.148 percent of Bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 22, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying the specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, September 22, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28122 Filed 9-28-81; 8:45 am]

BILLING CODE 6210-01-M

The Peoples Corp.; Formation of Bank Holding Company

The Peoples Corporation, Ripley, Mississippi, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Peoples Bank, Ripley, Mississippi. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 22, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Govenors of the Federal Reserve System, September 22, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28123 Filed 9-28-81; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Dental Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel; Change in Type of Meeting and Location

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a change in location of a meeting of the Dental Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel scheduled for October 2, 1981. The meeting was announced in the Federal Register of September 15, 1981 (46 FR 45815). In addition, the meeting has been authorized to be held as a telephone conference call. The meeting concerns a matter that is considered clear-cut, and the discussion will be brief. Under the circumstances, holding the meeting as a telephone conference call will save money and avoid unnecessary inconvenience to committee members, without impairing the public's participation in the meeting. The meeting will be held on October 2, 1981, Conference Rm. C, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD, from 2 p.m. until approximately 3 p.m. There will also be a speaker phone provided in the previously announced meeting place, i.e., Rm. 1200E, 8757 Georgia Ave., Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

Dated: September 22, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-28122 Filed 9-28-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 81N-0199]

Color in Anti-Human Serum Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is permitting the use of a green coloring agent in monspecific Anti-IgG Anti-Human Serum as well as in polyspecific Anti-Human Serum products. This action is in response to manufacturer's requests.

EFFECTIVE DATE: September 29, 1981.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: FDA is permitting the use of a green coloring agent in monospecific Anti-IgG (immunoglobulin G) Anti-Human Serum, in addition to its present approved use in polyspecific Anti-Human Serum products. Anti-Human Serum products are in vitro diagnostic products which are licensed as biologicals under the Public Health Service Act (42 U.S.C. 262), and are regulated by the Bureau of Biologics. The products are antibodies produced in rabbits or other animals immunized with human plasma proteins, and are used as diagnostic reagents for the detection of proteins, such as human IgG antibodies. Because of their in vitro use, Anti-Human Serum products are also "devices" within the meaning of section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)).

A color added for use in or on a medical device is subject to the color additive provisions under section 706 of the act (21 U.S.C. 376) only if the color comes in direct contact with the body of man or other animals for a significant period of time. Because Anti-Human Serum products, when used according to good laboratory practices, are not expected to come into direct contact with the body of humans, the agency concludes that Anti-Human Serum products are not subject to section 706 of the act.

By notice issued in the Federal Register of December 20, 1977 (42 FR 63820), the agency permitted the use of coloring in "all purpose" polyspecific reagents. Coloring was restricted to polyspecific reagents to help prevent the inadvertent use of monospecific or "limited purpose" reagents. Another reason for coloring the reagent was to assure that automated equipment, used by blood banks in processing large numbers of donors, was properly adding the reagent. The agency has recently received requests from manufacturers asking permission to use coloring agents in monospecific Anti-IgG Anti-Human Serum. The agency is aware that some blood banks which process large numbers of donors are using monospecific Anti-IgG reagents rather than Polyspecific Anti-Human Serum

products. It would be beneficial to permit coloring of monospecific Anti-IgG products because the presence of color verifies that the reagent is added to the test and serves as a critical quality control check for test procedures.

The agency does not believe that the use of the same coloring agent for monospecific and polyspecific reagents will result in problems in distinguishing between the two reagents. The presence of color is not intended as a color code for product identification. Product identification is assured through labeling requirements which specify that a black vial label with white lettering shall be used for monospecific reagents; and that a white vial label with black lettering shall be used for polyspecific reagents. The agency finds that the contrasting labeling required for the reagents provides adequate product identification and helps prevent unintentional use of either monospecific or polyspecific reagents. Because the industry now uses far more monospecific reagents than in the past, it is apparent that the quality control benefit resulting from the addition of coloring should be extended to those reagents also. The benefits to be obtained from this action clearly outweigh what the agency believes is a negligible risk of product misidentification. Therefore, the agency concludes that it is no longer essential to restrict coloring to only polyspecific reagents.

Manufacturers who wish to amend their Anti-Human Serum licenses to include the use of green color in their reagents must submit stability data in support of such an amendment, demonstrating that the Anti-IgG and/or anti-complement components are not adversely affected. Labeling for a colored Anti-Human Serum product should include a warning that falsely negative reactions may occur if the reagent is neutralized by contamination with human serum, i.e., observation of the color does not assure the presence of reactive antibody, and therefore cannot substitute for recommended quality control procedures. Proposed labeling revisions should be submitted with amendments to use a green coloring reagent.

Dated: September 23, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-28107 Filed 9-28-81; 8:45 am]

BILLING CODE 4110-03-M

Public Health Service

Health Maintenance Organizations; Cumulative List

Correction

In FR Doc. 81-19321, appearing at page 34512, in the issue of Wednesday, July 1, 1981, please make the following changes:

(1) On page 34513, middle column, fourth line from bottom of page, the footnote which appears above the last word, "Illinois" and reads "1" should be changed to read "2".

(2) On page 34515, third column, in the item numbered "13", last line, the date which reads "October 4, 1798" should be changed to read "October 4, 1978".

BILLING CODE 1505-01-M

Health Maintenance Organizations; List

Correction

In FR DOC. 26880 appearing at page 46002 in the issue of Wednesday, September 16, 1981, please make the following changes:

(1) On page 46003, first column, in the Supplementary Information, in the paragraph which begins, "Community Health Care Association," in the sixth line, "Sedgwich" should be changed to read, "Sedgwick".

(2) On page 46003, second column, center of the page, in the NOTE, item No. 1, first sentence, "PurCare" should be changed to read, "PruCare".

BILLING CODE 1505-01-M

DEPARTMENT OF INTERIOR

Bureau of Land Management

Boise District, Idaho; District Grazing Advisory Board; Meeting

In accordance with the Federal Advisory Committee Act, and the Federal Land Policy and Management Act, notice is given that the Boise, Idaho, District Grazing Advisory Board will meet on November 5 and 6, 1981.

The meeting will begin on November 5 at 9:00 a.m. in the Boise District Conference Room at 3948 Development Avenue, in Boise.

The agenda for the meeting will include:

The use of Range-Betterment Funds
Recommendations on FY 82 Range Betterment Projects

The meeting is open to the public. Interested persons may make oral statements to the Board between 1:00 and 3:00 p.m. on November 5, 1981, or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, BLM, 3948 Development Avenue, Boise, Idaho 83705 by November 4, 1981.

Minutes of the Board meeting will maintained in the District Office and will be available for the public inspection within 30 days following the meeting.

Martin J. Zimmer,

District Manager.

September 22, 1981.

[FR Doc. 81-28198 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-84-M

[INT FEIS 81-43]

Final Lakeview Grazing Management Environmental Impact Statement; Availability of FEIS

AGENCY: Bureau of Land Mangement, Interior.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of Interior has prepared a final environmental impact statement for the Lakeview area. The proposal involves implementing a grazing management program on public lands within the Lakeview District in south central Oregon.

Public reading copies will be available for review at the following locations:

Bureau of Land Management
Office of Public Affairs
18th and C Streets, NW
Washington, D.C. 20240

Bureau of Land Management
Office of Public Affairs
729 N.E. Oregon Street
Portland, Oregon 97208

Bureau of Land Management
Lakeview District Office
1000 Ninth St. S.
Lakeview, Oregon 97630

Oregon State University Library
Government Document Section
Corvallis, Oregon 97331

Portland State University Library
724 S.W. Morrison
Portland, Oregon 97201

University of Oregon Library
Government Document Section
Eugene, Oregon 97403

Oregon Institute of Technology Library
Klamath Falls, Oregon 97601

Central Oregon Community College Library
Collegeway
Bend, Oregon 97701

Harney County Library
80 West D
Burns, Oregon 97720

Klamath County Library
126 S. Third
Klamath Falls, Oregon 97601

Lake County Library
County Courthouse
Lakeview, Oregon 97630

A limited number of copies are available upon request from the Bureau of Land Management, Oregon State Office, or the Lakeview District office at the above addresses.

Comments on the FEIS will be accepted by the Lakeview District Manager until October 30, 1981.

Dated: September 15, 1981.

Philip C. Hamilton,

Chief, Divison of Planning and Environmental Coordination.

[FR Doc. 81-28192 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-84-M

Montana; Prairie Potholes Vegetation Allocation Final Environmental Impact Statement Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Prairie Potholes Vegetation Allocation Final Environmental Impact Statement Availability.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a Final Environmental Impact Statement (EIS) for vegetation allocation upon the public lands in north-central Montana. The EIS details six alternative vegetation allocations on nearly 1.75 million acres of public land within BLM's Lewistown District.

DATES: Hearings were held: April 22, 1981, in Glasgow, Montana; April 23, 1981, in Chinook, Montana; April 24, 1981, in Malta, Montana; April 27, 1981, in Helena, Montana.

ADDRESS: Requests for further information should be addressed to: Glenn W. Freeman, District Manager, Bureau of Land Management, Lewistown District, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The Final EIS describes and analyzes environmental consequences for six alternative courses of action. The six alternatives are: (A) Enhanced Combined Vegetation Uses; (B) Continuation of Present Management (BLM's Preferred Alternative); (C) Enhanced Livetock Forage; (D) Enhanced Watershed Value and Wildlife Habitat; (E) No Grazing; and (F) No Action. Comments upon the Draft EIS analysis were considered and used to prepare the Final EIS. The Final EIS will be used to develop a Rangeland Program Summary for the area included in the EIS.

A limited number of copies of the Final EIS are available for review at the following locations:

Bureau of Land Management, Office of Public Affairs, Interior Building, 18th and C Streets NW., Washington, D.C. 20240.
Bureau of Land Management, Lewistown District, Airport Road, Lewistown, Montana 59457
Bureau of Land Management, Havre Resource Area, Old Highway West, Havre, Montana 59501
Bureau of Land Management, Montana State Office, P.O. Box 30157, 222 North 32nd Street, Billings, Montana 59107
Bureau of Land Management, Phillips Resource Area, 501 S. 2nd E., Malta, Montana 59538
Bureau of Land Management, Valley Resource Area, Route 1-775, Glasgow, Montana 59230.

Dated: August 31, 1981.

Michael J. Penfold,

State Director.

[FR Doc. 81-28193 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-84-M

Scientific Committee of the Outer Continental Shelf (OCS) Advisory Board; Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92-463, 5 U.S.C. App. I and the Office of Management and Budget's Circular A-63 Revised.

The Scientific Committee of the Outer Continental Shelf Advisory Board will meet on October 28-30, 1981 from 8:00 a.m. to 5:00 p.m., each day. The meeting will be held in Room 244 of the Pacific OCS Building, 1340 W. 6th Street, Los Angeles, California.

The agenda for the meeting will include the following subjects:

- Review of Specific Components of BLM's OCS Environmental Studies in California
- California OCS Rig Monitoring Experiment
- Implementation of Peer-Review Options
- Status of Georges Bank Monitoring Program
- Impact of Streamlining on the OCS Environmental Studies Program

The meeting of this committee is open to the public. Approximately 50 visitors can be accommodated on a first-come/first-served basis. All inquiries concerning this meeting should be addressed to: Piet deWitt, Chief, Branch of Offshore Studies (623), Bureau of Land Management, Washington, D.C. 20240, Telephone: (202) 343-7744.

Robert F. Burford,

Director, Bureau of Land Management.

Approved: September 24, 1981.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 81-28194 Filed 9-28-81; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Emergency Work Funds Contract Negotiations, Fort Clark Irrigation District, Pick-Sloan Missouri Basin Program, North Dakota; Intent To Negotiate an Emergency Loan Contract

In accordance with procedures established by the Department of the Interior concerning public participation in water service and repayment contract negotiations, the Bureau of Reclamation (Bureau) intends to negotiate for repayment of a $10,000 emergency loan made to the Fort Clark Irrigation District. The proposed contract form will be prepared pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, particularly the Act of June 26, 1948 (62 Stat. 1052).

One of the district's 200 horsepower motors at its main pumping plant on the Missouri River burned out during the 1980 irrigation season. It was repaired by the district but the problem reoccurred three or four times during the irrigation season because of the outmoded electrical control system.

The proposed program includes rewinding the burned-out motor, reconditioning a second motor, and replacing the faulty contacts. All relays, wiring, etc. will be tested. Repairs and/or replacements as needed, will be made. Total repair costs are estimated to exceed $21,000. The district will utilize its reserve funds of about $11,000, and has obtained an emergency loan of about $10,000 to cover the total costs.

All meetings scheduled by the Bureau with the district for the purpose of discussing terms and conditions of the proposed contract will be open for public observation. Advance notice of meetings will be furnished to those parties having submitted a written request for a meeting schedule at least 1 week prior to any meeting. Requests should be addressed to Acting Regional Director, Bureau of Reclamation, Attention Code UM-440, P.O. Box 2553, Billings, Montana 59103. All written correspondence concerning the proposed contract will be made

available to the general public pursuant to terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

The public is invited to submit written comments on the form of the proposed contract not later than 30 days after the completed contract draft is declared to be available to the public. In the event little or no public interest is evidenced in the negotiations as gauged by the response to this notice and local news releases or announcements, the availability of the proposed form of contract for public review and comment will not be formally publicized through the **Federal Register** or other media.

For further information on scheduled contract negotiation sessions and copies of the proposed contract form, please contact Mr. William Crosby, Chief, Economics and Repayment Branch, Division of Water and Land, at the address stated above or by telephone (406) 657–6413.

Dated: September 23, 1981.

Aldon D. Nielsen,

Acting Assistant Commissioner of Reclamation.

[FR Doc. 81–28199 Filed 9–28–81; 8:45 am]

BILLING CODE 4310–09–M

Municipal Water Service Contract Negotiations Shoshone Project, Wyo.; Intent To Negotiate a Water Service Contract

The Department of the Interior, through the Bureau of Reclamation, intends to begin negotiating a contract with the town of Byron, Wyoming, to provide up to 600 acre-feet of water annually from Buffalo Bill Reservoir to meet the town's future demands. The proposed contract form will be prepared pursuant to section 9(c)(2) of the Reclamation Project Act of August 4, 1939 (53 Stat. 1187).

The town of Byron is in serious need of a supplemental water supply to meet expected future demands. City officials have requested that the Bureau of Reclamation allocate water from Buffalo Bill Reservoir for a future municipal water supply.

All meetings and/or negotiation sessions scheduled by the Bureau of Reclamation with the town of Byron for the purpose of discussing terms and conditions of the proposed contract will be open for public observation. Advance notice of such meetings or sessions will be furnished to those parties having submitted a written request for a meeting schedule at least 1 week prior to any meeting. Requests should be addressed to Acting Regional Director, Bureau of Reclamation, Attention UM-440, P.O. Box 2553, Billings, Montana 59103. All written correspondence concerning the proposed contract will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

A proposed draft contract will be made available for public review following completion of contract negotiations. Thereafter, a public hearing may be held, if necessary, and a 30-day period will be allowed for receipt of written comments from the public. Unless significant interest is evidenced in the negotiations, the availability of the contract for public review and comment will not be publicized.

For further information on scheduled contract negotiating sessions and copies of the proposed contract form, please contact Mr. William E. Crosby, Chief, Economics and Repayment Branch, Division of Water and Land, at the address stated above or by telephone (406) 657–6413.

Dated: September 23, 1981.

Aldon D. Nielsen,

Acting Assistant Commissioner of Reclamation.

[FR Doc. 81–28200 Filed 9–28–81; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[AB 111 SDM]

Detroit, Toledo & Ironton Railroad Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Detroit, Toledo & Ironton Railroad Company has filed with the Commission its amended color-coded system diagram map in docket No. AB 111 SDM. The Commission on September 14, 1981, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 111 SDM.

James H. Bayne,

Acting Secretary.

[FR Doc. 81–28208 Filed 9–28–81; 8:45 am]

BILLING CODE 7035–01–M

[AB 31 SDM]

Grand Trunk Western Railroad Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Grand Trunk Western Railroad Company has filed with the Commission its amended color-coded system diagram map in docket No. AB 31 SDM. The Commission on September 14, 1981, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 31 SDM.

James H. Bayne,

Acting Secretary.

[FR Doc. 81–28210 Filed 9–28–81; 8:45 am]

BILLING CODE 7035–01–M

[AB 43 SDM]

Illinois Central Gulf Railroad Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Illinois Central Gulf Railroad Company has filed with the Commission its amended color-coded system diagram map in docket No. AB 43 SDM. The Commission on September 18, 1981, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section

of Dockets, by requesting docket No. AB 43SDM.

James H. Bayne,

Acting Secretary.

[FR Doc. 81-28209 Filed 9-28-81; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 171]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: September 23, 1981.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publications 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 file 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.

MC 52574 (Sub-65)X, filed September 8, 1981. Applicant: ELIZABETH FREIGHT FORWARDING CORP., 120 South 20th Street, Irvington, NJ 07111. Representative: Edward J. Bowes, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Applicant seeks to remove restrictions in its Sub-Nos. 1 and 26 permits to (1) broaden the commodity description from (a) bakery goods and containers to "food and related products and containers" in Sub-No. 1; and (b) household appliances and housewares, and returned shipments to "rubber and plastic products, metal products and machinery" in Sub-No. 26; and (2) broaden the territorial descriptions to: between points in the United States under continuing contract(s) in Sub-No. 1; and between points in the U.S. under continuing contract(s) with a named shipper in Sub-No. 26.

MC 55898 (Sub-63)X, filed September 9, 1981. Applicant: DECATO BROS., INC., Heater Road, Lebanon, NH 03766. Representative: David M. Marshall, 101 State Street, Suite 304, Springfield, MA 01103. Applicant seeks to remove restrictions in its lead and Sub-Nos. 50, 52G, 53, 54F, 55F, 58F, 59F and 61F certificates to: (1) broaden the commodity descriptions from lumber, to "lumber and wood products" in the lead, Sheet Nos. 2, 4, 5; logs, wooden poles, wooden piling, wooden fences, wooden posts, rails, and pickets to "building materials, forest products, and lumber and wood products" in the lead, Sheet No. 5; bridge planking to "building materials" in the lead, Sheet No. 5; plywood to "building materials and lumber and wood products" in the lead, Sheet No. 6; prefabricated buildings, complete, or sections, flue liners to "building materials" in the lead, Sheet No. 6; building brick, and masonry supplies to "building materials, clay, concrete, glass, or stone products" in the lead, Sheet No. 6; prefabricated buildings, materials, supplies and equipment used in the manufacture thereof, to "building materials" in Sub-No. 50; lumber to "lumber and wood products" in Sub-No. 52; lumber, lumber products, wood products, forest products, and composition board to "lumber and wood products forest products, and building materials" in Sub-No. 53; gypsum materials to "clay, concrete, glass, or stone products" in Sub-No. 55; building board, wallboard and insulation board, moldings, fasteners, and accessories to "building materials, and lumber and wood products" in Sub-No. 58; lumber, lumber products, and finished forest products to "lumber and wood products and forest products" in Sub-No. 59; (2) authorize radial service instead of one-way service in the lead and Sub-Nos. 50 and 52F; (3) delete the exception against service to AK and HI in Sub-No. 50; (4) remove plantsite restrictions in Sub-Nos. 54 part 1, 55, 58, 59, and 61 part a; (5) eliminate commodity exceptions in the lead and Sub-Nos. 50, 53, 54, 55, and 61; (6) delete originating at or destined to restrictions in Sub-Nos. 54 part (1) and 61 part (a); (7) broaden cities to counties: Cleveland, OH, to Cuyahoga County, OH; Wilmington, DE, to New Castle County, DE, Sparrows Point, MD, to Baltimore County, MD, Scranton, Erie, Honesdale, and Haverford Township, PA, to Lackawanna, Erie, Wayne, and Delaware Counties, PA, in Sub-No. 52; Ashtabula, OH, to Ashtabula County, OH, in Sub-No. 54; Akron and Buchanan, NY, to Erie and Westchester Counties, NY, Delair, NJ, to Camden County, NJ, Milford, VA, to Caroline County, VA, Quakertown, PA, to Bucks County, PA, Wilmington, DE, to New Castle County, DE, and Marietta, GA, to Cobb County, GA, in Sub-No. 55; Askin, Lewiston, Plymouth, and Jacksonville, NC, to Craven, Bertie, Washington and Onslow Counties, NC, in Sub-No. 59; Port Arthur and Houston, TX, to Jefferson and Harris Counties, TX, in Sub-No. 61; Walton, NY, to Delaware County, NY, Woodsville, Lakeport, and Salmon Falls, NH, to Grafton, Belknap, and Strafford Counties, NH, White River Junction, VT, to Windsor County, VT, Cleveland, OH, to Cuyahoga County, OH, Wilmington, DE, to New Castle County, DE, Sparrows Point, MD, to Baltimore County, MD, Scranton, Erie, Honesdale and Haverford Township to Lackawanna, Erie, Wayne, and Delaware Counties, PA, Claremont, Laconia, Lebanon, Newport, and Rollinsford, NH, to Sullivan, Belknap, Grafton, and Strafford Counties, NH, Newbury, VT, to Orange County, VT, Barre, Rutland, and Bellow Falls VT, to Washington, Rutland and Windham Counties, VT, Manchester, NH, to Hillsboro County, NH, Keene, NH to Cheshire County, NH, Bridgeport, Hartford, and New Haven CT, to Fairfield, Hartford, and New Haven Counties, CT, Providence, RI, to Providence County, RI, Bethel and South Paris, ME, to Oxford County, ME, Berlin, NH, to Coos County, NH, Keene, NH, to Cheshire County, NH, Burlington, VT, to Chittenden County, VT, Portland and South Portland, ME, to Cumberland County, ME, Lyndonville, VT, to Caledonia County, VT, North Stratford, NH, to Coos County, NH, Meredith, NH, to Belknap County, NH, Sayerville, Somerville, and South River, NJ, to Middlesex, and Somerset Counties, NJ, Lebanon, NH, to Grafton County, NH, Roselle Park, Passaic, and Jersey City, NJ, to Union, Passaic, and Hudson Counties, NJ and Lawrence, Worcester, Boston, and Framingham, MA, to Essex, Worcester, Suffolk and Middlesex Counties, MA, in the lead; (8) delete the exception against service to Keene, NH, and 20 miles thereof, Providence, RI, and 15 miles thereof, and Nassau and Merrimack, NH, in the lead.

MC 79658 (Sub-13)X, filed September 16, 1981. Applicant: ATLAS VAN LINES, INC., 1212 St. George Road, P.O. Box 509, Evansville, IN 47703.

Representative: Michael L. Harvey (same as applicant). Applicant seeks to remove restrictions in its Sub-Nos. 3 and 12 certificates and its authority acquired in MC–F–13997 to (1) broaden the commodity descriptions to "household goods, furniture and fixtures" from household goods, in both subs and MC–F–13997, (2) remove the AK and HI restriction, in Sub-No. 12 and (3) remove the exception "except those points in AK east of an imaginary line constituting a southward extension of the U.S. (Alaska)-Canada (Yukon Territory) Boundary Line in the MC–F–13997 authority.

MC 113140 (Sub-5)X, filed September 9, 1981. Applicant: STEEL TRANSPORTERS OF CALIFORNIA, 607 West B Street, Wilmington, CA 90744. Representative: Daniel W. Baker, 100 Pine Street, #2550, San Francisco, CA 94111. Applicant seeks to remove restrictions in its lead and Sub-No. 4F certificates to (1) broaden commodity descriptions as follows: lead certificate, to "metal products" from iron, steel, and iron and steel articles: to "chemicals and related products" from chemicals; and Sub-No. 4, to "metal products and chemicals and related products" from iron and steel articles, aluminum ingots, and sheets, zincs and alloys; (2) remove limitations which specify the origin and destination of service to be at "docks, Wharves, and piers" in the lead certificate; (3) change one-way service to radial service in the lead certificate; and (4) broaden named points to county-wide authority, in the lead certificate: San Francisco, Alameda and Contra Costa Counties, CA (San Francisco, Oakland, Richmond, and Alameda, CA), Contra Costa County, CA (Pittsburg, CA), and Merced County, CA (Merced, CA).

MC 123744 (Sub-96)X, filed September 18, 1981. Applicant: BUTLER TRUCKING COMPANY, P.O. Box 88, Woodland, PA 16881. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 North Second Street, Clearfield, PA 16830. Applicant seeks to remove restrictions in its Sub-No. 94 certificate to (1) broaden the commodity description from iron and steel articles, and materials and supplies used in the manufacture and distribution of iron and steel articles to "metals and metal products and materials and supplies used in the manufacture or distribution of metals and metal products"; and (2) remove the "except AK and HI" restriction.

MC 124170 (Sub-187)X, filed September 14, 1981. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Representative: William J. Boyd, 2021 Midwest Road, Suite 205, Oak Brook, IL 60521. Applicant seeks to remove restrictions in its Sub-Nos. 17 and 42 certificates to: (1) broaden the commodity description from bananas and agricultural commodities, exempt from economic regulations under Section 203(b)(6) of the Act, when transported in mixed loads with bananas in Sub-No. 17, and (b) malt beverages in Sub-No. 42 to "food and related products"; (2) change its one-way to radial authorities in Sub-Nos. 17 and 42; (3) replace Wilmington, DE with county-wide authority to serve New Castle County, DE in Sub-No. 17; and (4) remove prior movement by water restriction in Sub-No. 17.

MC 134405 (Sub-106)X, filed September 14, 1981. Applicant: BACON TRANSPORT COMPANY, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615–East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Applicant seeks to remove restrictions in its Sub-No. 101F certificate, which authorizes the transportation of barite, drilling mud and drilling mud additives, in bulk, between points in OK, and, points in AR, KS, LA, MS, OK, and TX, to broaden the commodity description to "commodities in bulk."

MC 144592 (Sub-10)X, filed September 14, 1981. Applicant: WAYDENS HEAVY HAULERS, INC., 1400 North 6th Avenue, Hiawatha, IA 52233. Representative: James M. Hodge, 1000 United Central Bank Bldg., Des Moines, IA 50309. Applicant seeks to remove restrictions in its Sub-Nos. 1F, 3F, and 5F permits to (1) broaden the commodity descriptions from (a) material handling systems and storage silos in Sub-No. 1F; (b) stone, gravel, ore and clay processing equipment in part 1 in Sub-No. 3F; and (c) printing machinery and parts for printing machinery in part 1 in Sub-No. 5F to "machinery and those commodities which because of their size and weight require the use of special handling or equipment"; (2) broaden the territorial descriptions to between points in the U.S. under continuing contract(s) with a named shipper in each permit; and (3) remove the "except commodities in bulk" restriction in its materials, equipment and supplies authority in Sub-Nos. 3F and 5F.

MC 145507 (Sub-5)X, filed September 11, 1981. Applicant: TRUCKING SERVICES, INC., 26400 Van Born Road, Dearborn Heights, MI 48125. Representative: John W. Bryant, 900 Guardian Building, Detroit, MI 48226. Applicant seeks to remove restrictions in its No. MC–142439 and Sub-No. 3 permits to (1) broaden the commodity description in each permit to "lumber and wood products, and building materials" from lumber and building materials in the lead permit, and from lumber and pre-cut building panels and sections in Sub-No. 3; (2) remove the exception, "vermiculite in bags," in the lead permit; and (3) broaden the territorial descriptions to authorize service between points in the U.S., under continuing contract(s) with the named shippers.

MC 146457 (Sub-6)X, filed September 14, 1981. Applicant: PAISLEY TRUCKING, INC., P.O. Box 208, Durango, IA 52309. Representative: James M. Hodge, 10000 United Central Bank Bldg., Des Moines, IA 50309. Applicant seeks to remove restrictions in its Sub-Nos. 2F, 3F and 4F certificates to (1) broaden the commodity descriptions from (a) sand and sand with additives to 'clay, concrete, glass or stone products," in Sub-No. 2F, (b) malt beverages and empty cans and lids to "food and related products," in Sub-No. 3F, and (c) salt to "chemicals and related products," in Sub-No. 4F; (2) broaden facilities or city-wide authority to county-wide authority: (a) Oregon, IL to Ogle County, IL, in Sub-No. 2F, (b) facilities at Dubuque, IA to Dubuque County, IA; facilities at Chicago and Lamont, IL to Cook County, IL; and facilities at Lockport, IL to Will County, IL, in Sub-No., 3F, and (c) facilities at Dubque, IA to Dubuque County, IA, in Sub-No. 4F; and (3) authorize radial authority to replace existing one-way authority, in all certificates.

MC 147150 (Sub-1)X, filed September 15, 1981. Applicant: TRYPORT TRANSPORTATION, INC., 1425 South Main Street, Pittston, PA 18640. Representative: Ronald N. Cobert, 1730 M Street, N.W., Suite 501, Washington, D.C. 20036. Applicant seeks to remove restrictions in its lead certificate to (1) broaden the commodity description in part (1) of the certificate from general commodities (except those of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment) to "general commodities (except classes A and B explosives); (2) remove the "originating at or destined to the facilities of named shippers association" restriction from the scope of authority in part (1) and remove the restrictions limiting applicant to transporting shipments on bills of lading of shippers' associations from the scope of authority in part (1); (3) broaden the commodity

description in part (2) of the certificate from printed matter to "pulp, paper and related products", and (4) replace specified points with counties in part (2) of the certificate: Scranton, PA, with Lackawanna and Luzerne Counties, PA; Binghampton, NY, with Broome County, NY, St. Louis, MO, with Jefferson, St. Charles and St. Louis Counties, MO, and Madison, Monroe and St. Clair Counties, IL; and Troy, MO, with Lincoln County, MO.

MC 147712 (Sub-37)X, filed September 16, 1981. Applicant: MID-WESTERN TRANSPORT, INC., 10506 S. Shoemaker Avenue, Santa Fe Springs, CA 70670. Representative: Daniel C. Sullivan, 10 South LaSalle Street, Suite 1600, Chicago, IL 60603. Applicant seeks to remove restrictions in its MC-147712 Sub-Nos. 5, 9F, and 10F certificates to (1) broaden the commodity descriptions (a) in Sub-No. 5, from alcoholic beverages, and in Sub-No. 9F, from confectionary products and cough drops to "food or related products"; and (b) in Sub-No. 10F, from containers to "metal products, rubber and plastic products, and clay, concrete, glass or stone products"; (2) remove in Sub-No. 9F facilities restriction at Reading, PA, and replace with "Berks County, PA"; (3) broaden one-way service to radial service in Sub-Nos. 5 and 9F; (4) remove restrictions (a) in Sub-No. 10F limiting service to transportation of traffic having a prior or subsequent movement by water, and (b) in Sub-No. 5, prohibiting service to AK and HI; and (6) authorize materials, equipment and supplies authority in its radial grant in Sub-No. 10F.

MC 150583 (Sub-3)X, filed September 14, 1981. Applicant: ROSENBERGER ENTERPRISES, INC., 200 East Clinton, Indianola, IA 50125. Representative: James M. Hodge, 1000 United Central Bank Bldg., Des Moines, IA 50309. Applicant seeks to remove restrictions in its Sub-Nos. 1F and 2F to (1) broaden commodity descriptions from (a) machinery, parts for machines, bicycle chains, pumps, and chemicals, to "Machinery and machine parts, and chemicals and related products" in Sub-No. 1F, and (b) from iron and steel articles to "Metal products" in Sub-No. 2F; (2) broaden New Haven, CT to New Haven County, CT in Sub-No. 2F; (3) authorize radial service in lieu of existing one-way authority between Los Angeles, CA and points in the U.S. in Sub-NO. 1F; and between Detroit, MI, and New Haven County, CT, and points in the U.S. in Sub-No. 2F; and (4) delete the commodity restriction "in containers" from its Sub-No. 1F.

MC 150700 (Sub-6)X, filed August 27, 1981. Applicant: OLIN WOOTEN TRANSPORT CO., INC., P.O. Box 731, Hazlehurst, GA 31539. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Applicant seeks to remove restrictions in its Sub-Nos. 1F, 2F, 3F, 4F and 5F certificates to (1) broaden the commodity description in Sub-No. 1 from newsprint, newspapers, cores, and materials, equipment and supplies used in the manufacture and distribution of newsprint (except commodities in bulk) to "pulp, paper and related products"; from sheet steel containers to "metal products"; from wire to "metal products"; from containers and pulpboard (except commodities in bulk) to "pulp, paper and related products, metal products, rubber, plastic products and clay, concrete, glass or stone products"; from containers and container parts and materials and supplies used in the manufacture of containers and container parts to "pulp, paper and related products, metal products, rubber, plastic products and clay, concrete, glass or stone products"; from materials and supplies used in the manufacture of paint (except commodities in bulk) to "chemicals and related products"; from malt beverages to "food and related products"; from containers, container ends and packing material used in the shipment of container ends to "pulp, paper and related products, metal products, rubber, plastic products and clay, concrete, glass or stone products"; from crushed marble and ground limestone, in bags and materials and supplies used in quarrying, fabricating, crushing and grinding of marble stone to "ores and minerals"; from tin cans, tin can parts, steel pails and drums and materials and supplies used in the manufacture of the commodities described above to "metal products"; from glass containers and materials and supplies used in the manufacture, sale and distribution of glass containers to "clay, concrete, glass or stone products"; in Sub-No. 2, from waste or scrap paper to "pulp, paper and related products; in Sub-No. 3, from paper and paper products to "pulp, paper and related products"; in Sub-No. 4, from part (1) containers and container ends to "pulp, paper and related products, metal products, rubber, plastic products and clay, concrete, glass or stone products"; in Sub-No. 5, from part (1) containers, container closures, and packing products to "pulp, paper and related products, metal products, rubber, plastic products and clay, concrete, glass or stone products"; and (2) replace one-way authority with radial authority in all Sub-Nos.; and (3) broaden the territorial scope from city-wide to county-wide authority in Sub-No. 1, from Lumber City, GA to Telfair County, GA; from Atlanta and Lithonia, GA, Chattanooga, Knoxville and Nashville, TN, Fernandina Beach and Wildwood, FL, Greensboro, Shelby and Winston-Salem, NC, Solon and Cincinnati, OH to Fulton and DeKalb Counties, GA; Hamilton, Knox and Davidson Counties, TN; Nassau and Sumter Counties, FL; Guilford, Cleveland and Forsyth Counties, NC; and Cuyahoga and Hamilton Counties, OH; from Homerville, GA to Clinch County, GA; from Pabst, GA to Houston County, GA; from Tate and Whitestone, GA and Gantts Quarry, AL to Pickens County, GA and Talladega County, AL; from Somerville, NJ to Somerset County, NJ from cliffwood, NJ, Warner Robins, GA, Henryetta, OK, Terre Haute, IN, and Shakopee, MN, Middlesex and Monmouth Counties, NJ; Houston County, GA; Okmulgee County, OK, Vigo County, IN, and Scott County, MN; in Sub-No. 2, from the named facilities at Macon, GA to Bibb County, GA; in Sub-No. 3, from St. Marys, GA to Camden County, GA; in Sub-No. 5, from Hubbard, OH, Chicago and Elgin, IL to Trumbull County, OH and Cook and Kane Counties, IL.

[FR Doc. 81-28211 Filed 9-28-81; 8:45 am]

BILLING CODE 7035-01-M

[AB 6 SDM]

Burlington Northern Railroad Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Burlington Northern Railroad Company has filed with the Commission its amended color-coded system diagram map in docket No. AB 6 SDM. The Commission on September 10, 1981, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section

of Dockets, by requesting docket No. AB 6 SDM.

James H. Bayne,

Acting Secretary.

[FR Doc. 81-28207 Filed 9-28-81; 8:45 am]

BILLING CODE 7035-01-M

[AB 18 SDM, et al.]

Chessie System Railroads; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Chessie System Railroads has filed with the Commission its amended color-coded system diagram map in docket No. AB 18 SDM, et al. The Commission on September 1, 1981, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 18 SDM et al.

James H. Bayne,

Acting Secretary.

[FR Doc. 81-28200 Filed 9-28-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the Federal **Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the 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 environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be statisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OPY-2-182

Decided: September 23, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier, Member Chandler not participating.

MC 107012 (Sub-743), filed September 18, 1981. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same as applicant), (219) 429-2224. Transporting *general commodities* (except class A and B explosives) between points in the U.S., under continuing contract(s) with Dometic, Inc., of Bloomington, IL, and its subsidiaries.

MC 111412 (Sub-9), filed September 8, 1981. Applicant: J. I. HAILEY, INC., Navigation Blvd., P.O. Box 1919, Corpus Christi, TX 78403. Representative: James R. Boyd, 1000 Perry Brooks Bldg., Austin, TX 78701, 512-476-8066. Transporting (1) *Mercer Commodities*, (2) *earth drilling machinery*, and (3) *those commodities which because of their size or weight require the use of special handling or equipment*, between points in CO, KS, LA, MS, NM, OK, TX, and WY.

MC 128662 (Sub-6), filed September 18, 1981. Applicant: STICKLEY'S GARAGE, INC., P.O. Box 2842, Winchester, VA 22601. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740, (301) 797-6060. Transporting *diagnostic reagents* between points in the U.S., under continuing contract(s) with Baker Instruments Corporation, of Winchester, VA.

MC 129712 (Sub-60), filed September 17, 1981. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Guy H. Postell, Suite 713, 3384 Peachtree Rd., NE., Atlanta, GA 30326, (404) 237-6472. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of lumber and wood products, and building materials, between points in the U.S., under continuing contract(s) with The Peter Kuntz Company, of Dayton, OH.

MC 143702 (Sub-19), filed September 11, 1981. Applicant: ALL FREIGHT SYSTEMS, INC., 1026 South 10th St., Kansas City, KS 66105. Representative: Donald J. Quinn, Commerce Bank Bldg., 8901 State Line, Suite 232, Kansas City, MO 64114, 816-444-7474. Transporting *greenhouses* and *parts* for greenhouses, between points in the U.S., under continuing contract(s) with Stuppy Greenhouse Supply, of North Kansas City, MO.

MC 144572 (Sub-60), filed September 8, 1981. Applicant: MONFORT TRANSPORT COMPANY, P.O. Box G, Greeley, CO 80632. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202, 303-892-6700. Transporting *bags and textile mill products*, between points in the U.S., under continuing contract(s) with Indian Valley Industries, Inc., of Binghamton, NY.

MC 147712 (Sub-35), filed September 14, 1981. Applicant: MID-WESTERN TRANSPORT, INC., 14625 Carmenita Rd., Norwalk, CA 90650. Representative: Joseph Fazio (same address as applicant) 213–921–7474. Transporting *building woodwork*, between points in the U.S., under continuing contract(s) with Morelock Wood Products, Inc., of Bend, OR.

MC 148472 (Sub-4), filed September 8, 1981. Applicant: CLOVER CLUB FOODS COMPANY, P.O. Box 228, Kaysville, UT 84037. Representative: Bruce W. Shand, Suite 280, 311 S. State St., Salt Lake City, UT 84111, 801–531–1300. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of containers, between points in the U.S., under continuing contract(s) with Quintex Corporation, of Nampa, ID.

MC 154222, filed September 8, 1981. Applicant: PIPECO, INC., 1113 E. Memphis, P.O. Box 1334 Broken Arrow, OK 74012. Representative: David R. Worthington, 1916 Valley Rd., Sapulpa, OK 74066, 918–224–2748. Transporting *oil field equipment* and *petroleum equipment*, between points in NM, CO, TX, UT, WY, KS, and OK.

MC 158282, filed September 16, 1981. Applicant: GR TRANSPORT SERVICE, P.O. Box 303, Pelham, NY 10803. Representative: Ronald M. Gentile, 34 Badeau Place, New Rochelle, NY 10801 (914) 636–7072. Transporting *frozen bakery products* between New Haven, CT and Buffalo, NY, on the one hand, and, on the other, points in CA, GA, IL, IN, MI, FL, CO, MD, OH, WI, MN, NE, MO, TX, VA, PA, MA, NJ, NC, TN, IA, AZ, and NV, under continuing contract(s) with Lender's Bagel Bakery, Inc., of West Haven, CT.

MC 158293, filed September 16, 1981. Applicant: RLC TRANSPORTATION CO., INC., 515 7th St., P.O. Box 120, Carrollton, KY 41008. Representative: Edward G. Bazelon, 39 South LaSalle St., Chicago, IL 60603 (312) 236–9375. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Consolidated Packaging Corporation, of Chicago, IL, Helene Curtis Industries, Inc., of Chicago, IL, Rich Ladder Co., of Carrollton, KY, Williams Furnace Co., of La Mirada, CA, R. D. Werner & Co., Inc., of Greenville, PA, Protective Treatments, Inc., of Dayton, OH, and Harvstone Manufacturing Corporation of Elk Grove Village, IL.

MC 158313, filed September 17, 1981. Applicant: SIGMA TRANSPORT CORP., 750 Albany Avenue, North Lindenhurst, NY 11757. Representative: Lewis Barton (same as applicant) (516) 957–8100. Transporting *food and related products*, and *pulp, paper and related products*, between points in NY, NJ and CT, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, ME, MD, MI, MN, MO, MS, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV, and DC.

Volume No. OPY–3–176

Decided: September 22, 1981.

By the Commission, Review Board Number 2, Members Carleton, Fisher, and Williams.

MC 2095 (Sub-37), filed September 14, 1981. Applicant: KEIM TRANSPORTATION, INC., P.O. Box 226, Sabetha, KS 66534. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612 (913) 233–9629. Transporting *food and related products*, between points in Kansas City, MO, and Wichita, KS, on the one hand, and, on the other, points in ND, NE, CO, OK, IA, MO and AR.

MC 15975 (Sub-53), filed September 14, 1981. Applicant: BUSKE LINES, INC., 123 W. Tyler Ave., Litchfield, IL 62056. Representative: Howard H. Buske (same address as applicant) (217) 324–2141. Transporting *automobile parts and accessories*, between Melvindale, MI, on the one hand, and, on the other, Louisville, KY and Metuchen, NJ.

MC 43685 (Sub-30), filed September 14, 1981. Applicant: MERCER TRUCKING COMPANY, INC., P.O. Box 11585, Spokane, WA 99211. Representative: Dwight Dively (same address as applicant) (509) 535–3597. Transporting *salt and salt products*, between points in UT, on the one hand, and, on the other, points in ID, MT, OR, and WA.

MC 81835 (Sub-10), filed September 17, 1981. Applicant: MONIOWCZAK TRANSIT COMPANY, P.O. Box 235, Escanaba, MI 49829. Representative: William B. Elmer, 624 Third St., Traverse City, MI 49684 (616) 941–5313. Transporting *malt beverages and related products*, between points in LaCrosse County, WI, Anoka, Dakota, Hennepin, Ramsey and Washington Counties, MN, Peoria County, IL, and Shelby County, TN, on the one hand, and, on the other, points in the Upper Peninsula of MI.

MC 97275 (Sub-46), filed September 15, 1981. Applicant: ESTES EXPRESS LINES, 1405 Gordon Ave., Richmond, VA 23224. Representative: Harry J. Jordan, Suite 502, Solar Bldg., 1000 16th St., NW, Washington, DC 20036 (202) 783–8131. Transporting *general commodities* (except classes A and B explosives), between points in MD and WV, on the one hand, and, on the other, points in MD, VA, NC, SC, TN, GA and DC.

MC 105774 (Sub-14), filed September 14, 1981. Applicant: JOHNSON TRUCK LINE, INC., Jct. US Hwy 281 & US Hwy 24, Osborne, KS 67473. Representative: William B. Barker, 641 Harrison Street, P.O. Box 1979 Topeka, KS 66601 (913) 234–0560. Transporting *such commodities* as are dealt in by producers of copper and copper products, between the facilities of Kennecott Minerals Company in AZ, NV, NM, and UT, on the one hand, and, on the other, points in the U.S.

MC 106074 (Sub-185), filed September 17, 1981. Applicant: B AND P MOTOR LINES, INC., Shiloh Rd. and U.S. Hwy. 221, S., Forest City, NC 28043. Representative: John J. Capo, P.O. Box 720434, Atlanta, GA 30328 (404) 256–4320. Transporting *clay products*, between points in Thomas County, GA, on the one hand, and, on the other, points in NC, SC, TN, and VA.

MC 115944 (Sub-13), filed September 15, 1981. Applicant: COLORADO PACIFIC TRUCKING, INC., d.b.a. COLPAC, INC., 5080 McIntyre St. Golden, CO 80401. Representative: Ivan L. Nielson (same address as applicant) (303) 279–3732. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Prem Mark, Inc., of Denver, CO.

MC 124004 (Sub-70), filed September 15, 1981. Applicant: RICHARD DAHN, INC., 620 West Mountain Rd., Sparta, NJ 07871. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934 (201) 435–7140. Transporting *general commodities* (except classes A and B explosives), between points in the U.S.

MC 125335 (Sub-125), filed September 10, 1981. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501 (402) 474–6763. Transporting: *general commodities* (except classes A and B explosives), between points in CT, DE, MA, MD, NJ, NY, OH, and PA, on the one hand, and, on the other, points in the U.S., restricted to traffic originating at or destined to the facilities of the Charter Oak Shipper's Cooperative Association, Inc., Co-Operative Shippers, Inc., Northeastern Pennsylvania Shippers Cooperative Association, Inc., Seacoast Shippers Association, Inc., and their respective members.

MC 127955 (Sub-9), filed September 17, 1981. Applicant: RICCI TRANSPORTATION CO., INC., Odessa Ave. and Aloe St., Pomona, NJ 08240.

Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517 (609) 965–2538. Transporting: *food and related products*, between Lehigh and Westmoreland Counties, PA, Oswego County, NY, Rockingham County, NC, Dougherty and Lee Counties, GA, on the one hand, and, on the other, points in Camdem County, NJ.

MC 133105 (Sub-6), filed September 14, 1981. Applicant: J AND J TRANSFER, INC., 2420 Blanchard Blvd., Columbus, GA 31903. Representative: W. H. Tomlinson, 1601 13th St., Columbus, GA 31901 (404) 322–8404. Transporting: *chemicals and related products*, between Columbus, GA, on the one hand, and, on the other, points in LA, MS, AR, NC and VA.

Note.—Applicant intends to tack this authority to its existing authority.

MC 138875 (Sub-313), filed September 15, 1981. Applicant: SHOEMAKER TRUCKING COMPANY, a Corporation, 11900 Franklin Rd., Boise, ID 83709. Representative: Patricia A. Russell (same address as applicant) (208) 376–5757. Transporting: *pulp, paper and related products*, and *printed matter*, between points in NY, on the one hand, and, on the other, points in OR.

MC 141695 (Sub-8), filed September 11, 1981. Applicant: JORDAN VALLEY TRUCKING CO., INC., P.O. Box 594, Jordan Valley, OR 97910. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701 (208) 343–3961. Transporting: *general commodities* (except classes A and B explosives), between points in Malheur County, OR and Owyhee County, ID, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 145054 (Sub-48), filed September 11, 1981. Applicant: COORS TRANSPORTATION COMPANY, 5101 York St., Denver, CO 80216. Representative: Leslie R. Kehl, 1660 Lincoln St., Suite 1600, Denver, CO 80264 (303) 861–4028. Transporting *pulp, paper and related products*, between points in the U.S., under continuing contract(s) with Weyerhaeuser Company, of Tacoma, WA.

MC 145985 (Sub-2), filed September 18, 1981. Applicant: GREEN COUNTY EXPRESS, INC., Box 475, Lena, IL 61048. Representative: Robert T. Lawey, 300 Reisch Bldg., Springfield, IL 62701 (217) 544–5468. Transporting (1) *food and related products*, and (2) *such commodities* as are dealt in or used by retail stores, curio shops, and catalog distribution centers, between points in the U.S., under continuing contract(s) with Swiss Colony, Inc., of Monroe, WI.

MC 146234 (Sub-1), filed September 14, 1981. Applicant: BURNHAM TRUCKING COMPANY, INC., Box 393, 4101 W. Burnham St., Milwaukee, WI 53201. Representative: B. A. Klimek, 30 W. Monroe St., Chicago, IL 60603 (312) 346–0300. Transporting *lumber and wood products*, and *metal products*, between points in the US., under continuing contract(s) with (1) Kinzua Corporation, of Heppner, or, (2) Midwest Lumber Associates, of Sun Prairie, WI, and (3) Proler International Corporation, of Houston, TX.

MC 146464 (Sub-10), filed September 16, 1981. Applicant: NEVADA GENERAL TRANSPORTATION, INC., P.O. Box 391, Elko, NV 89801. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701 (208) 343–3071. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with (1) Anaheim Builders Supply, Inc., of Anaheim, CA, (2) Christensen Diamin Tools, Inc., of Salt Lake City, UT, (3) DEP Corp., of Los Angeles, CA, (4) Desert Company, A division of Park-Davis, of Sandy, UT, (5) Dresser Industries, Inc.—Magcobar Group, of Houston, TX, (6) Freeport Gold Company, Of Elko, NV, (7) Millchem, Inc., of Houston, TX, (8) Ralston Purina Company, of St. Louis, MO, (9) Riverside Industries, Inc., of Tulsa, OK, (10) Starkist Foods, Inc., of Terminal Island, CA, and (11) Superior Fireplace Company, a division of Mobex Corporation, of Fullerton, CA.

MC 146674 (Sub-8), filed September 15, 1981. Applicant: K.I.T. MOTOR EXPRESS, INC., P.O. Box 4004, Louisville, KY 40204. Representative: Edward J. Kiley, 1730 M St., NW., Washington, DC 20036 (202) 296–2900. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Celanese Corporation, of Chatham, NJ.

MC 146865 (Sub-6), filed September 15, 1981. Applicant: M. T. SERVICES, INC. d.b.a. BRENNAN EXPRESS, P.O. Box 18402, Baltimore, MD 21237. Representative: Raymond P. Keigher, 401 E. Jefferson St., Suite 102, Rockville, MD 20850 (301) 424–2420. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of electric and electronic products, between points in the U.S., under continuing contract(s) with General Electric Company of Fairfield, CT.

MC 147665 (Sub-5), filed September 15, 1981. Applicant: BASSETT FURNITURE INDUSTRIES OF NORTH CAROLINA, INC., d.b.a BASSETT TRUCKING COMPANY, P.O. Box 47, Newton, NC 28658. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Bldg., 301 S. McDowell St., Charlotte, NC 28204 (703) 372–6730. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Jiffy Packaging Corporation, of Hickory, NC.

MC 148305 (Sub-2), filed September 14, 1981. Applicant: A. J. NINNEMAN TRUCKING, Rural Route 1, Denton, NE 68339. Representative: Max H. Johnston, P.O. Box 6597, Lincoln, NE 68506 (402) 488–4841. Transporting *food and related products*, between points in Lancaster County, NE, on the one hand, and, on the other, points in CA, CO, LA, MS, and TX.

MC 148495 (Sub-2), filed September 14, 1981. Applicant: KENNETH S. RAMSEY, d.b.a K. S. RAMSEY TRUCKING, 210 West Bridge St., Danville, IL 61832. Representative: Thomas A. Graham, 4 West Seminary St., Danville, IL 61832 (217) 443–0304. Transporting *washed sand and gravel*, between points in Warren County, IN and Vermilion County, IL.

MC 150645 (Sub-4), filed September 15, 1981. Applicant: TILEWAYS, INC., 7834 C. F. Hawn Freeway, Dallas, TX 75217. Representative: Jackson Salasky, P.O. Box 45538, Dallas, TX 75245 (214) 358–3341. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Ben E. Keith Company, and its facilities, of Ft. Worth, TX.

MC 152045 (Sub-5), filed September 16, 1981. Applicant: CASON COMPANIES, INC. d.b.a. CASON BUILDERS SUPPLY, 1880 Spartanburg Hwy, Hendersonville, NC 28739. Representative: O.W. Cason, P.O. Box 2030, Hendersonville, NC 28793 (704) 693–0246. Transporting *electrical equipment and parts*, between points in the U.S., under a continuing contract(s) with General Electric Company, of East Flat Rock, NC.

MC 152555 (Sub-3), filed September 15, 1981. Applicant: HALL'S FREIGHTWAY, INC., 4505 S. Harding St., Indianapolis, IN 46217.. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240 (317) 846–6655. Transporting *transportation equipment and metal products*, between points in the U.S., under continuing contract with Arvin Industries, Inc. of Columbus, IN.

MC 153514 (Sub-3), filed September 14, 1981. Applicant: BURCE MATTILA TRUCKING, 5601 E. Glenmoor Rd., Minnetonka, MN 55343. Representative: Robert P. Sack, P.O. Box 6010, West St.

Paul, MN 55118 (612) 457–6889. Transporting *metal products,* between points in the U.S., under continuing contract(s) with Edco Products, Inc. of Hopkins, MN.

MC 156835, filed September 14, 1981. Applicant: JOHN FARLEY d.b.a. BOWLING GREEN EXPRESS, 619 Champ Clark Dr., Bowling Green, MO 63334. Representative: Joseph E. Rebman, 314 N. Broadway, Suite 1300, St. Louis, MO 63102 (314) 421–0842. Over *regular routes,* transporting *general commodities* (except classes A and B explosives), between (1) St. Louis and Hannibal, MO; from St. Louis over Interstate Hwy 70 to junction U.S. Hwy 61, then over U.S. Hwy 61 to Hannibal and return over the same route; (2) between St. Louis and Hannibal, MO; from St. Louis over Interstate Hwy 70 to junction to MO Hwy 79, then over MO Hwy 79 to Hannibal and return over the same route; and (3) between Louisiana and Vandalia, MO, over U.S. Hwy 54, serving all intermediate and off-route points in connection with routes (1) through (3).

Note.—Applicant intends to tack this authority with its existing regular route authority.

MC 157684 (Sub-1), filed September 16, 1981. Applicant: SMITH'S WHSE., P.O. Box 195, Halsey, OR 97348. Representative: Paul Zehr (Same address as applicant) (503) 369–2831. Transporting *paper products, lumber products, animal feed products, and grass seed bags,* between points in OR and WA.

MC 158234, filed September 15, 1981. Applicant: PACIFIC MOTOR TRANSPORT, INC., P.O. Box 759, Tenino, WA 98589. Representative: George H. Hart, 1100 IBM Building, Seattle, WA 98101, (206) 624–7373. Transporting *such commodities* as are dealt in by sporting goods distributors and dealers, between points in the U.S., under continuing contract(s) with Farwest Sports, Inc., of Olympia, WA.

Note.—the authority granted to the extent it authorizes the transportation of Classes A and B explosives, shall expire 5 years after the date of issuance.

MC 158244, filed September 9, 1981. Applicant: ALPHA TRANSPORT, INC., 8600 Elligsen Road, P.O.B. 683, Wilsonville, OR 97070. Representative: William E. Seliski, 2 Commerce St., P.O.B. 8255, Missoula, MT 59807, (406) 543–8369. Transporting *lumber and wood products,* between points in OR, WA, MT, ID, and CA, on the one hand, and, on the other, points in CA, CO, IL, IN, IA, KS, MN, MO, NE, ND, OH, SD, TX, UT, WI, and WY.

MC 158295, filed September 17, 1981. Applicant: CHEYENNE TRANSPORTATION, INC., 4094 Summerhill Rd., Texarkana, TX 75503. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., Ten South Fifth St., Minneapolis, MN 55402, (612) 340–0808. Transporting *machinery,* between points in the U.S., under continuing contract(s) with V & V Sales, Inc., of Grand Forks, ND.

MC 138875 (Sub-396), filed August 17, 1981 previously published in the Federal Register issue of September 2, 1981. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83709. Representative: Patricia A. Russell (same address as applicant), (202) 376–5757. Transporting *metal products,* between points in IL and UT, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY. This republication corrects the territorial description.

Volume No. OPY–4–374

Decided: September 17, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 727 (Sub-2), filed September 9, 1981. Applicant: HEGINS VALLEY LINES, INC., P.O. Box 407, Millersburg, PA 17061. Representative: Lloyd R. Persun, P.O. Box 729, Harrisburg, PA 17108, (717) 232–6701. Transporting *passengers and their baggage,* in the same vehicle with passengers, in round-trip charter and special operations, beginning and ending at points in Dauphin County, PA, in and north of the Township of Jackson and Halifax, and those in Schuylkill County, PA, and extending to points in the U.S.

MC 70557 (Sub-57), filed September 9, 1981. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 W. Homer St., Chicago, IL 606390. Representative: Carl L. Steiner, 39 S. LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *general commodities* (except classes A and B explosives), between the facilities of Armstrong World Industries, Inc. in the U.S., on the one hand, and, on the other, points in the U.S.

MC 106187 (Sub-4), filed September 1, 1981. Applicant: THE FREE ENTERPRISE SYSTEM, INC., 2101 Hamburg Pike, Jeffersonville, IN 47130. Representative: Allison J. Maggilo, 2556 First National Tower, Louisville, KY 40202, (502) 589–4100. Transporting *passengers and their baggage,* in special or charter operations, between points in Jefferson County, KY and Floyd and Clark Counties, IN, on the one hand, and, on the other, points in the U.S.

MC 114227 (Sub-13), filed September 9, 1981. Applicant: A & C CARRIERS, INC., 2909 E. Laketon Ave., Muskegon, MI 49442. Representative: William B. Elmer, 624 Third St., Traverse City, MI 49684, (616) 941–5313. Transporting *petroleum, natural gas and their products* (1) between points in IL, IN, MI, and OH, and (2) between points in IL, IN, MI, and OH, on the one hand, and, on the other, points on the International Boundary line between the U.S. and Canada.

MC 145557 (Sub-17), filed August 14, 1981, previously noticed in the Federal Register of September 4, 1981, and republished this issue. Applicant: LIBERTY TRANSPORT, INC., P.O. Box 9182, Kansas City, MO 64148. Representative: Arthur J. Cerra, 2100 CharterBank Center, P.O. Box 19251, Kansas City, MO 64141, (816) 842–8600. Transporting *food and related products,* between the facilities of Armour Food Company, at points in CA, TX, SD, KY, NE, ID, MO, MN, WI, IA, PA, OR, and IL, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this republication is to show the State of MO instead of MD.

MC 158137, filed September 9, 1981. Applicant: ROSEWOOD CORPORATION, STORAGE SPECIALTIES DIVISION, 2432 N. Prior, St. Paul, MN 55113. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting *general commodities* (except classes A and B explosives), between Minneapolis, MN, on the one hand, and, on the other, points in MN, ND, SD, and WI.

MC 158147, filed September 9, 1981. Applicant: MY WORLD TRAVEL, INC., 306–C, U.S. Route 202 (Concord Pike), Chadd's Ford, PA 19317. Representative: Paula R. Maiorano (same address as applicant), (215) 358–3744. To operate as a *broker,* at Chadd's Ford, PA, in arranging for the transportation of *passengers and their baggage,* between points in the U.S. (except AK and HI).

James H. Bayne,

Acting Secretary.

[FR Doc. 81-28212 Filed 9-28-81; 8:45 am]

BILLING CODE 7035-01-

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the Federal Register on December 31, 1980, at 45 FR 86771. For compliance procedures, refer

to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 2, Members Carleton, Fisher and Williams.

James H. Bayne,

Acting Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OPY-3-174

Decided: September 18, 1981.

MC 151905, filed September 11, 1981. Applicant: FREHNER WHOLESALE, d.b.a. FREHNER TRANSPORTATION, 1208 Taylor, North Las Vegas, NV 89030. Representative: Robert G. Harrison, 4299 James Dr., Carson City, NV 89701, (702) 882-5649. Transporting, for or on behalf of the U.S. Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 158194, filed September 11, 1981. Applicant: MARVIN W. LEE, R.R. 1, Box 76, Adrian, ND 58410. Representative: Robert N. Maxwell, P.O. Box 2471, Fargo, ND 58108 (701) 237-4223. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

Volume No. OPY-3-177

Decided: September 22, 1981.

MC 158224, filed September 15, 1981. Applicant: MOUNTAIN TOP TRUCKING CORPORATION, P.O. Box 127, Monson, MA 01057. Representative: Gary Senecal, 9 Bond St., Bondsville, MA 01009 (413) 283-8335. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 158264, filed September 14, 1981. Applicant: COMMERCIAL TRANSPORTATION SERVICES, 7585 Madison St., Hinsdale, IL 60521. Representative: Oscar B. Garza, 151 Muehl Dr., Lockport, IL 60441 (815) 838-4558. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 158265, filed September 14, 1981. Applicant: DONAHUE TRUCKING CO., INC., 5633 W. Highland, Phoenix, AZ 85031. Representative: Rusty Burks, 1600 W. Camelback Rd., Ste 2-S, Phoenix, AZ 85015 (802) 264-7403. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 158274, filed September 15, 1981. Applicant: HOKE'S LOCAL CARTAGE, INC., 4391 Swisher's Mill Rd. Lewisburg, OH 45338. Representative: Clarence Hoke, Jr. (same address as applicant) (513) 962-4587. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 158284, filed September 14, 1981. Applicant: WESTERN AG TRUCK BROKERS, INC., 2750 North Parkway Dr., Fresno, CA 93771. Representative: David B. Rosenman, 315 So. Beverly Dr., Suite 315, Beverly Hills, CA 90212 (213) 277-2323. As a *broker*, of *general commodities* (except household goods), between points in the U.S.

[FR Doc. 81-28205 Filed 9-28-81; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Abbott Laboratories; Manufacturer of Controlled Substances; Registration

By Notice dated April 30, 1981, and published in the **Federal Register** on May 6, 1981, (46 FR 25377) Abbott Laboratories, 14th & Sheridan Rd., Attn: Customer Service D-345, N. Chicago, Ill. 60064, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of pentobarbital, a basic class of controlled substance listed in schedule II.

No comments or objections having been received, and pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations § 1301.54(e), the Acting Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: September 21, 1981.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 81-28112 Filed 9-28-81; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Meeting

The regular fall meeting of the Business Research Advisory Council will be held at 9:30 a.m., October 21, 1981, in room N-5437 of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry. The agenda for the meeting is as follows:

1. Chairman's Opening Remarks—Noel A. McBride
2. Commissioner's Remarks—Janet L. Norwood
3. Committee Reports:
   (a) Occupational Safety and Health (Reduction in recordkeeping, new measure of occupational risk)
   (b) Price Indexes (Rental equivalent research, Family Budgets, committee's program evaluations)
   (c) Employment and Unemployment (Data for private sector initiatives, committee's program evaluations)
   (d) Wages and Industrial Relations (Trends in Employment Cost Index, committee's program evaluations)
4. Other Business
5. Chairman's Closing Remarks

This meeting is open to the public. It is suggested that persons planning to attend as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on Area Code (202) 272-5241.

Signed at Washington, D.C. this 21st day of September 1981.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 81-28174 Filed 9-28-81; 8:45 am]

BILLING CODE 4510-24-M

Business Research Advisory Council Committees; Meetings and Agenda

The fall meetings of committees of the Business Research Advisory Council will be held on October 15, 19, and 20, 1981.

The Committee on Occupational Safety and Health will hold its meeting in room N-3437 of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. The meetings of the Committees on Price Indexes, Employment and Unemployment, and Wages and Industrial Relations will be held in room 2734, General Accounting Office Building, 441 G Street, N.W., Washington, D.C.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda of the meetings are as follows:

Thursday, October 15

10:00 a.m.—Committee on Occupational Safety and Health

1. Results of the study on recordkeeping burden.
2. Discussion of reduction in recordkeeping requirements.
3. The new measure of occupational risk.
4. Work Injury Reports scheduled for FY 1982.
5. State participation in BLS statistical programs and grant funds for FY 1982.
6. Other Business.

Monday, October 19

1:30 p.m.—Committee on Price Indexes

1. Status report on proposed rental equivalent research (pending FY 1982 budget proposals).
2. Use of Consumer Expenditure Survey in the CPI.
3. Status report on the Family Budget Program.
4. Report on BRAC Price Committee program priorities.
5. Status report on the Producer Price Index Revision.
6. Other Business.

Tuesday, October 20

9:30 a.m.—Committee on Employment and Unemployment

1. Secretary of Labor's response to NCEUS recommendations.
2. Discussion of priorities for labor force programs.
3. The 790 revision plans for FY 1982.
4. Data to support private sector initiatives.
5. Other Business.

Tuesday, October 20

1:30 p.m.—Committee on Wages and Industrial Relations

1. Review of WIR Work in Progress.
2. Employment Cost Index—recent trends.
3. Collective Bargaining Outlook for 1982.
4. Committee Project on Setting WIR Program Priorities.
5. Other Business.

The meetings are open to the public. It is suggested that persons planning to attend these meetings as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on Area Code (202) 272-5241.

Signed at Washington, D.C. this 21st day of September 1981.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 81-28173 Filed 9-28-81; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

[TA-W-11,607, 11,607A & 11,608]

Garon's Knitting Mills, Inc., Duluth, Minn.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated on November 10, 1980 in response to petitions which were filed on behalf of workers at the East Michigan Street and North 30th Avenue plants of Garon's Knitting Mills, Incorporated, Duluth, Minnesota. The investigation was expanded to include workers at the West 1st Street plant of Garon's Knitting Mills, Incorporated, Duluth, Minnesota. Workers at these plants produce women's and men's knit caps, mittens, gloves, scarves and sweaters.

U.S. aggregate imports of men's, boys', women's and juniors' knit headwear increased absolutely and relative to domestic production from 1978 to 1979, absolutely from 1979 to 1980, and absolutely during the January through June period of 1981 compared with the same period of 1980.

The ratio of U.S. imports of dress mittens and gloves as a percentage of domestic production remained above 385 from 1976 through 1980.

U.S. aggregate imports of women's misses' and children's sweaters increased absolutely from 1979 to 1980. The ratio of imports as a percentage of domestic production of women's, misses' and children's sweaters remained above 125 from 1976 through 1979.

The ratio of U.S. imports of men's and boys' sweaters as a percentage of domestic production remained above 60 from 1976 through 1979.

The Department surveyed customers of Garon's Knitting Mills, Incorporated for their purchases of men's and

women's knit caps, mittens, gloves, scarves, and sweaters during 1979 and 1980. Customers representing a substantial proportion of sales and the decline in sales at Garon's Knitting Mills, Incorporated reported decreasing purchases from Garon's Knitting Mills, Incorporated and increasing purchases of imported knit caps, mittens, gloves, scarves and sweaters either absolutely or in relation to their total purchases.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the men's and women's knit caps, mittens, gloves, scarves, and sweaters produced at Garon's Knitting Mills, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the East Michigan Street, West First Street, and North 30th Avenue plants of Garon's Knitting Mills, Incorporated, Duluth, Minnesota who became totally or partially separated from employment on or after October 27, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of September 1981.

Robert A. Schaerfl,

Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 81-28183 Filed 9-28-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10, 427]

Leo Paley, Inc.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated on August 25, 1980 in response to a petition which was filed by the International Ladies' Garment Workers Union on behalf of workers at Leo Paley, Incorporated, New York, New York. Workers at Leo Paley, Incorporated produce ladies' blouses.

U.S. imports of women's, misses' and children's blouses and shirts increased absolutely in 1980 compared to 1979 and for the January through June period of 1981 compared to the same period of 1980. The ratio of imports to domestic production exceeded 60 percent in 1978 and 1979.

The Department conducted a survey of major customers of Leo Paley, Incorporated. The survey revealed that customers increased purchases of imported ladies' blouses while decreasing purchases from the subject firm 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 ladies' blouses produced at Leo Paley, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Leo Paley, Incorporated, New York, New York who became totally or partially separated from employment on or after August 11, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of September 1981.

Robert A. Schaerfl,

Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 81-28179 Filed 9-28-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-12,109]

Pacific Northwest Cedar Products, Inc., Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated on January 19, 1981 in response to a petition which was filed on behalf of workers at Pacific Northwest Cedar Products, Incorporated, Forks, Washington. The workers produced red cedar shakes.

U.S. imports of red cedar shakes, shingles, hips, and ridges increased relative to domestic production in 1980 compared to 1979.

Sales of cedar shakes and average employment at Pacific Northwest Cedar Products, Incorporated declined in 1980 compared to 1979.

A Department of Labor survey of Pacific Northwest Cedar Products, Incorporated's customers revealed that surveyed customers with reduced purchases of shakes from Pacific Northwest Cedar Products, Incorporated and increased purchases of imported shakes represented a substantial proportion of Pacific's sales decline in 1980 compared to 1979.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with red cedar shakes produced at Pacific Northwest Cedar Products, Incorporated, Forks, Washington contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Pacific Northwest Cedar Products, Incorporated, Forks, Washington who became totally or partially separated from employment on or after December 31, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of September 1981.

Robert A. Schaerfl,

Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 81-28182 Filed 9-28-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-12,025]

Post Shake Company, Inc.; 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 December 31, 1980 in response to a petition which was filed on behalf of workers at Post Shake Company, Incorporated, Montesano, Washington. The workers produce red cedar shakes.

U.S. imports of red cedar shingles, shakes, hips, and ridges increased absolutely and relative to domestic production in 1979 compared to 1978 and increased relative to domestic production in 1980 compared to 1979. Imports increased absolutely in the first quarter of 1981 compared to the first quarter of 1980.

A Department of Labor survey revealed that surveyed customers reduced purchases of red cedar shakes from Post Shake Company, Incorporated in 1979 compared to 1978 and in 1980 compared to 1979 while at the same time increasing purchases of imported red cedar shakes.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with red cedar shakes produced at Post Shake Company, Incorporated, Montesano, Washington contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Post Shake Company, Incorporated, Montesano, Washington who became totally or partially separated from employment on or after December 26, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of September 1981.

Robert A. Schaerfl,

Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 81-28181 Filed 9-28-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-12,207]

Saginaw Shingle Co.; 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 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 January 30, 1981 in response to a petition which was filed on behalf of workers at Saginaw Shingle Company, Aberdeen, Washington. The workers produce red cedar shakes and shingles.

U.S. imports of red cedar shakes, shingles, hips, and ridges increased relative to domestic production in 1980 compared to 1979.

A Department of Labor survey of Saginaw Shingle Company's customers revealed that surveyed customers with reduced purchases of shakes and shingles from Saginaw and increased purchases of imported shakes and shingles represented a substantial proportion of Saginaw's sales decline in 1980 compared to 1979.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with red cedar shakes and shingles produced at Saginaw Shingle Company, Aberdeen, Washington contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Saginaw Shingle Company, Aberdeen, Washington who became totally or partially separated from employment on or after January 23, 1980 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of September 1981.

Robert Schaerfl,

Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 81-28180 Filed 9-28-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-11,531]

S. W. Evans and Sons; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated on October 31, 1980 in response to a petition which was filed on behalf of workers at S. W. Evans and Sons, Philadelphia, Pennsylvania. The workers at S. W. Evans and Sons produced umbrella frames.

U.S. imports of umbrella frames increased both absolutely and relative to domestic production in 1979 compared to 1978 and in 1980 compared to 1979.

Company imports of umbrella frames increased both absolutely and relative to domestic production in 1979 compared to 1978 and in 1980 compared to 1979.

Conclusion

After careful review of the facts obtained in the investigation, I conlcude that increases of imports of articles like or directly competitive with umbrella frames produced at S. W. Evans and Sons, Philadelphia, Pennsylvania contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of S. W. Evans and Sons, Philadelphia, Pennsylvania who became totally or partially separated from employment on or after October 22, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of September 1981.

Robert A. Schaerfl,

Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 81-28184 Filed 9-28-81; 8:45 am]

BILLING CODE 4510-28-M

Mine Safety and Health Administration

[Docket No. M-81-150-C]

Eastern Associated Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Eastern Associated Coal Corp., Koppers Building, Pittsburg, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 49.6 (equipment and maintenance requirements; mine rescue teams) to its twenty-one mines located in the state of West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that each mine rescue station be equipped with twelve self-contained oxygen breathing apparatus, each with a minimum of two hours capacity (approved under Subpart H of Part II of this title) and any necessary equipment for testing such breathing apparatus.

2. Petitioner presently maintains at least six equipped mine rescue teams and a minimum of six mine rescue stations.

3. As an alternative method which will provide the same degree of safety to the miners affected as that afforded by the standard, petitioner proposes to maintain a minimum of six mine rescue stations, each equipped with:

(a) Six self-contained oxygen breathing apparatus, each with a minimum of 2 hours capacity (approved under Subpart H of Part II of this title), and any necessary equipment for testing such breathing apparatus;

(b) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating or carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatus and sufficient to sustain two teams for six hours while using the breathing apparatus during rescue operations; and

(c) An oxygen pump or cascading system at specified locations.

4. Petitioner states that travel time between the mine rescue stations is less than two hours.

5. Petitioner further states that to strictly comply with the regulation, it would be required to consolidate its minimum of six rescue stations with one team each and reduce its total number of stations to two, each with two rescue teams, which would result in a diminution of safety for the miners affected because:

(a) The establishment and maintenance of only two stations would effectively reduce a team's response time. Members of rescue teams are currently stationed at each mine;

(b) A two-station system would require additional travel time once team members were called out for service elsewhere. Such members would have to travel a greater distance than the proposed minimum of six-station method, and then travel to the mine where needed;

(c) individual team members are familiar with their respective mines; to consolidate the stations and teams would result in the loss of this familiarity which may be crucial in an emergency.

6. For these reasons, petitioner requests a modification of 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 October 29, 1981. Copies of the petition are available for inspection at that address.

Dated: September 18, 1981.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-28176 Filed 9-28-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-52-M]

Multi Mineral Corp. Petition for Modification of Application of Mandatory Safety Standard

Multi Mineral Corporation, 715 Horizon Drive, Suite 380, Grand Junction, Colorado 81501 has filed a petition to modify the application of 30 CFR 57.11-50 (escapeways; requirements) to its No. 1 Shaft located in Rio Blanco County, Colorado. 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 a mine must have at least two separate escapeways.

2. The petitioner states it is engaged solely in exploration and development activities at its mine. Because the standard recommends but does not require a second escapeway during exploration or development of an ore body, the petitioner believes in good faith that a second escapeway is not currently required at its mine.

3. Construction of a second escapeway would take longer than the petitioner's proposed activities and expose its miners to the dangers inherent to shaft construction.

4. As an alternative, the petitioner states in detail how its ventilation system, mining practices, methane detection and monitoring programs, refuge chambers, evacuation procedures and the general competency of the rock, when considered in conjunction with the safety problems inherent in building a second escapeway, offer miners no less the same protection as 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 October 29, 1981. Copies of the petition are available for inspection at that address.

Dated: September 23, 1981.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-28177 Filed 9-28-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-195-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, 301 North Memorial Drive, P.O. Box 235, St. Louis, Missouri 63166 has filed a petition to modify the application of 30 CFR 75.326 (air courses and belt haulage entries) to its Sunnyhill No. 9 South Mine, located in Perry County, Ohio. 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 intake and return air course entries be separated from belt haulage entries.

2. As an alternative method, petitioner proposes to establish specific inspection stations along the No. 1 South Belt entry. Examinations will be made not less than once each production shift at these inspection stations and the date, time and initials of the examiner will be placed at such inspection stations.

3. Petitioner states that the proposed alternative method will provide the same degree of safety for 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 October 29, 1981. Copies of the petition

are available for inspection at that address.

Dated: September 23, 1981.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-28178 Filed 9-28-81; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 81-87]

American Medical International, Inc. Pension Plan, Beverly Hills, Calif. (Exemption Application No. D-2604); Exemption From Prohibitions for Certain Transactions

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits the sale to American Medical International, Inc. (AMI) by the American medical International, Inc. Pension Plan (the Plan), of its interest in the DIC Trust, a trust created by AMI to hold the stock of Denver Insurance Company, Inc., a wholly-owned subsidiary of AMI, which is the Plan sponsor.

FOR FURTHER INFORAMTION CONTACT: Mr. Robert N. 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. (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 6, 1981, notice was published in the **Federal Register** (46 FR 34861) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption form 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 transaction. 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 two letters were received. The first commentator stated that he approved of the proposed exemptions. The second commentator was the applicant' representative who stated that the applicant was unable to distribute the notice to interested persons prior to July 17, 1981, which was the deadline for such distribution. The applicant completed the distribution of the notice on July 24, 1981 and requested that the Department extend the comment period from August 17, 1981 to August 24, 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 August 24, 1981. The Department agreed to the applicant's modified compliance with the notice provisions of the proposed 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; 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 section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale to AMI by the Plan of its interest in the DIC Trust for a cash amount equal to the greater of: (1) the value of the Plan's interest in the DIC Trust on the date of sale, as determined by an independent appraiser, less the sum of $1 million plus 8% interest on that amount compounded annually from December 1, 1976; or (2) $100,000, provided that the purchase price is no less than the fair market value of the Plan's interest in the DIC Trust on the date of 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 21st day of September 1981

Ian D. Lanoff,

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

[FR Doc. 81-27994 Filed 9-28-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-83]

Construction Industry Retirement Plan of Rockford, Ill. (Exemption Application No. D-2261); Exemption for Prohibitions for Certain Transactions

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption would exempt the entering into an arrangement to fund, and the funding of, long-term mortgage loans by the Construction Industry Retirement Plan of Rockford, Illinois (the Plan) in situations where the loans are arranged by and the borrower is receiving construction financing from a bank which is a service provider to the Plan.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas 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) 523-8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 24, 1981, notice was published in the **Federal Register** (46 FR 38171) 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 by the Plan trustees. 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 it has complied with the requirements of the notification to interested persons as set forth in the notice of pendency. 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 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) 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 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) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the entering into an arrangement to fund, and the funding of, long-term mortgage loans by the Plan in situations where the loans are arranged by and the borrower is receiving construction financing from a bank which is a service provider to the Plan. Moreover, the foregoing exemption shall apply only if the following conditions are met:

(a) At the time the transaction is entered into, the terms of the transaction are not less favorable to the Plan than the terms generally available in arm's length transactions between unrelated parties.

(b) The Plan maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the fiduciaries of the Plan, records are lost or destroyed prior to the end of the six-year period, (2) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the sanctions imposed by section 4975 of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service;

(ii) Any employer, or duly authorized representative of such employer, of employees who are covered by the Plan;

(iii) Any employee organization, or duly authorized representative of such organization, members of whom are covered by the Plan;

(iv) Any participant or beneficiary of the Plan or any duly authorized representative of such participant or beneficiary.

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 to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 21st day of September 1981.

Ian D. Lanoff,

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

[FR Doc. 81-27988 Filed 9-28-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-84]

Dial Import Corp. Employees Pension Trust, New York, N.Y. (Exemption Application No. D-2285); Exemption From Prohibitions for Certain Transactions

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the proposed cash sale by the Dial Import Corp. Employees Pension Trust (the Plan) to Mr. David Yeston, a fiduciary with respect to the Plan, of an undivided 10 percent interest in the Dakota Towers Joint Venture (the Joint Venture).

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, N.W., Washington, D.C. 20216. (202) 523-8671. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 24, 1981, notice was published in the **Federal Register** (46 FR 38173) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) and 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 transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been furnished to interested persons in compliance with the requirements set forth in the notice of proposed exemption. 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 interest 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) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale to Mr. David Yeston of the Plan's undivided 10 percent interest in the Joint Venture for the U.S. dollar equivalent of $70,000 (Canadian), provided that this amount is not less than the fair market value of such interest at the time of the sale.

The 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 21st day of September, 1981.

Ian D. Lanoff,

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

[FR Doc. 81-27997 Filed 9-28-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-86]

Merrill Lynch Realty Commercial Services, Inc., formerly Merrill Lynch Realty Management, New York City, N.Y. (Exemption Application No. D-2552); Exemption From Prohibitions for Certain Transactions

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits certain aspects of the proposed provision of real estate services by Merrill Lynch Commercial Services, Inc. (Merrill Lynch Services) and its affiliates to insurance companies (Insurance Companies) maintaining pooled separate accounts in which employee benefit plans invest.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 24, 1981, Notice was published in the **Federal Register** (46 FR 38180) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(b) 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) (E) and (F) of the Code, for the provision of real estate services by Merrill Lynch Services and its affiliates to Insurance Companies maintaining pooled separate accounts in which employee benefit plans invest. 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. One comment was received by the Department. In such comment, the applicant notified the Department that its name had been changed from Merrill Lynch Realty Management to Merrill Lynch Commerical Services, Inc. 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(a) of the Act and section 4975(c)(1) (A) through (D) 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(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (E) and (F) of the Code, shall not apply to the provision of real estate brokerage services as described in the notice of pendency and the receipt of commission with respect to such services by Merrill Lynch Services and its affiliates.

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 21st day of September 1981.

Ian D. Lanoff,

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

[FR Doc. 81-27995 Filed 9-28-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-85]

Sherwood Industries, Inc. Profit Sharing Plan and Trust and Sherwood Industries, Inc. Pension Plan and Trust, Trenton, N.J. (Exemption Application Nos. D-2331 and D-2332); Exemption From Prohibitions for Certain Transactions

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption will permit: (1) for a period of five years the proposed loans (the Loans) of money by the Sherwood Industries, Inc. Profit Sharing Plan and Trust (Profit Sharing Plan) and the Sherwood Industries, Inc. Pension Plan and Trust (the Pension Plan) collectively, (the Plans) to the Sherwood Leasing Company (Sherwood Leasing), a party in interest with respect to the Plans; and (2) the guarantee of the obligation of Sherwood Leasing in such Loans by Sherwood Industries Inc. (Sherwood Industries), Henry Dubin (Dubin) and Sidney Sussman (Sussman), parties in interest with respect to the Plans.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 6, 1981, notice was published in the **Federal Register** (46 FR 34874) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the above described transactions. The notice set forth a summary of facts and representations contained in the applications for exemption and referred interested persons to the applications for a complete statement of the facts and representations. The applications

have been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicants have represented that they have satisfied the 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.

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 of other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) for a period of five years to the Loans provided that the terms and conditions of the Loans are at least as favorable to the Plans as those which they could receive in similar transactions with unrelated parties; and (2) the guarantee of the obligation of Sherwood Leasing in such Loans by Sherwood Industries, Dubin and Sussman.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the applications are true and complete, and that the applications accurately describe all material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C. this 21st day of September, 1981.

Ian D. Lanoff,

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

[FR Doc. 81-27996 Filed 9-28-81; 8:45 am]

BILLING CODE 4510-29-M

Office of Pension and Welfare Benefit Programs

[ORPS Application No. P-1101V]

Employee Benefit Plans; Alternative Method of Compliance for the Employees' Retirement Plan of W.T. Grant Co.

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

ACTION: Grant of alternative method of compliance.

SUMMARY: The Department of Labor (the Department) hereby grants an alternative method of compliance with the reporting and disclosure requirements of the Employee Retirement Income Security Act of 1974 (the Act) for the Employees' Retirement Plan of W.T. Grant Company (the Plan).

EFFECTIVE DATE: October 29, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Malagrin of the Department, (202) 523–8684. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: On March 27, 1981, notice was published in the **Federal Register** (46 FR 19112) of the pendency before the Department of an alternative method of compliance with certain reporting and disclosure requirements of the Act for the Plan. The alternative method of compliance was requested in a petition filed by the Plan's legal counsel on behalf of the Plan's Retirement Board, which has general administrative responsibility for the Plan, pursuant to section 110(a) of the Act. [1]

The notice set forth a summary of the facts and representations contained in the petition for an alternative method of compliance and referred interested persons to the petition on file with the Department for a complete statement of the facts and representations.

The petition has been available for public inspection in the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested alternative method of compliance.

The Department received one letter of comment, from the petitioner, regarding the proposal. The petitioner requests that the Department revise footnote 1 of the proposal regarding the engagement of an actuary to review the operation of the Plan and render an opinion thereon, and the requirement to prepare Schedule B (Form 5500) for certain plan years. The Department had set forth in that footnote the petitioner's request for relief from these requirements based on the petitioner's assertion that the Plan was not and will not be subject to the

[1] Under section 110(a) of the Act, the Department must determine that the use of an 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.

minimum funding standards of the Act. The Department noted in the proposal that employee benefit plans not subject to ERISA's minimum funding standards are not subject to the actuarial requirements discussed above. The petitioner's comment letter, however, requested that the Department state unequivocally that the Plan is not subject to the minimum funding standards because the Plan terminated on February 29, 1976, a date which preceded the effective date of such requirements. In this regard, the Internal Revenue Service (IRS) has primary responsibility for administering ERISA's minimum funding standards and the authority, as here relevant, to make interpretations of these provisions.[2] Therefore, a determination as to whether the Plan has not in fact been subject to the funding requirements of Title I would need to be made by the IRS rather than the Department.

The petitioner further requested that its proposed request for relief from the requirement to prepare and file certified financial statements for the plan year in which all of its assets are distributed be withdrawn. The Department hereby grants the petitioner's request for such withdrawal.

The petitioner represents that it has complied with the procedure for notification to interested persons set forth in the Notice of Pendency by furnishing a copy of the required notices to the Plan's participants' court-appointed counsel in the class action proceeding described in the Notice of Pendency, who, petitioner also represents, are both authorized and obligated to take such action as may be necessary to protect the participants' interests in this proceeding.

The petitioner has also provided additional supplemental information updating the class action, which the Department has included in its files relating to this alternative method of compliance.

Alternative Method of Compliance

In accordance with section 110(a) of the Act and based upon the entire record, the Department makes the following determinations:

(1) The use of the alternative method is consistent with the purposes of Title I of the Act and provides adequate disclosure to the Plan's participants and beneficiaries and adequate reporting to the Department;

(2) The application of the summary plan description, annual reporting, and summary annual report requirements 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; and

(3) The application of the summary plan description, annual report, and summary annual report requirements of the Act would be adverse to the interests of the Plan's participants in the aggregate.

Accordingly, the Department hereby grants the following alternative method of compliance:

The administrator of the Plan is relieved of the reporting and disclosure requirements set forth in section 1 below, provided that the conditions set forth in section 2 are or have been met.

Section 1

(a) Completion of Item 24(a), Item 24(b) and Item 22(b) and attachment of certified financial statements and schedules to Form 5500 for the Plan years ended June 30, 1976, June 30, 1977 and June 30, 1978, respectively at the time such forms were filed.

(b) Preparation and distribution of summary annual reports to Plan participants, and

(c) Preparation and distribution of summary plan descriptions to Plan participants and the Secretary of Labor.

Section 2—Conditions to the Granting of Alternative Method of Compliance

The Retirement Board shall:

(a) prepare and file revised Forms 5500 with certified financial statements and schedules attached and a completed Item 24(a), Item 24(b) and Item 22(b) for the Plan years ended June 30, 1976, June 30, 1977 and June 30, 1978, respectively;

(b) distribute copies of Forms 5500, with certified financial statements and schedules attached, for the Plan years ended June 30, 1975, June 30, 1976, June 30, 1977, June 30, 1978 and all Plan years beginning after June 30, 1978 to class counsel;

(c) give written notice to each participant (including each retiree) under the Plan as of its termination date, or his beneficiary, informing him of whether he would receive a benefit and, if so, the amount of his benefit which would be paid, if the requested declaratory judgement were granted by the Court, and given him the opportunity to object to such notice and to correct any error in calculation or otherwise which may have been reflected therein; and

(d) inform class counsel and the Court of all developments in the termination of the Plan and the distribution of its assets as directed by the Court in accordance with the procedural requirements of the class action litigation.

The availability of this alternative method of compliance is subject to the express conditions that the material facts and representations contained in the petition are true and complete and that the petition accurately describes all factors material to the granting of the alternative method of compliance.

Signed at Washington, D.C. this 21st day of September, 1981.

Ian D. Lanoff,

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

[FR Doc. 81-28021 Filed 9-28-81; 8:45 am]

BILLING CODE 4510-29-M

[2] *See*, Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979).

Wage and Hour Division

Certificates Authorizing Employment of Learners at Special Minimum Wages

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and Administrative Order No. 1–76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. For each certificate, the effective and expiration dates, number or proportion of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

The following certificates were issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.20 to 522.25, as amended). The following normal labor turnover certificates authorize 10 percent of the total number of factory production workers except as otherwise indicated.

Big River Mfg. Co., Kittanning, PA; 8–31–81 to 8–30–82. (Boys' shirts)

Bland Sportswear, Inc., Bland, VA; 7–24–81 to 7–23–82; 10 learners. (Men's and boys' shirts)

Crane Mfg. Co., Crane, MO; 8–14–81 to 8–13–82; (Men's, boys' and women's jeans)

Crane Mfg. Co., Marionville, MO; 8–14–81 to 8–13–82; (Men's boys' and women's jeans)

The following certificates were issued under the knitted wear industry regulations (29 CFR 522.1 to 522.9, as amended and 522.30 to 522.35, as amended.)

Junior Form Lingerie, Inc., Boswell, PA 8–19–81 to 8–18–82; 5 percent of the total number of factory production workers

for normal labor turnover purposes. (Ladies' underwear and sleepwear)

Louis Gallet, Inc., Uniontown, PA; 6–22–81 to 6–21–82; 5 learners for normal labor turnover purposes. (Men's and ladies' sweaters)

Somerset Manufacturing Co., Inc., Somerset, PA; 6–29–81 to 12–28–81; 30 learners for plant expansion purposes. (Women's slips)

Each learner certificate has been issued upon the representations of the employer which, among other things were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available.

The certificate may be annulled or withdrawn as indicated therein, in the manner provided in 29 CFR Part 528. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof on or before October 29, 1981.

Signed at Washington, D.C. this 23rd day of September 1981.

Arthur H. Korn,

Authorized Representative of the Administrator.

[FR Doc. 81–28175 Filed 9–28–81; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Advisory Council; Task Group No. 19; Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92–463, the National Science Foundation announces the following meeting:

Name: Task Group #19 of the NSF Advisory Council

Place: Room 543, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550

Date: Wednesday, September 30, 1981

Time: 9:00 a.m. to 5:00 p.m.

Type of meeting: Open

Contact person: Ms. Jeanne Hudson, Executive Secretary of the NSF Advisory Council, National Science Foundation, Room 518, 1800 G Street NW., Washington, D.C. 20550. Telephone: 202/357–9433

Purpose of task group: The purpose of the Task Group, composed of members of the NSF Advisory Council, is to provide the full Advisory Council with a mechanism to consider numerous issues of interest to the Council that have been assigned by the National Science Foundation

Summary minutes: May be obtained from the contact person at above stated address

Agenda: The Task Group is asked to consider the needs of organizations requiring policy research and analysis and to survey those NSF programs providing it. This will involve questions of coordination, possible overlap, and policy-making procedures as well as those of substance. In addition, the Council is asked to provide suggestions for the future development of NSF's science and technology policy resources

Reason for late notice: The decision to hold this meeting was not made by the Chairperson until 9/9.

M. Rebecca Winkler,

Committee Management Coordinator.

September 10, 1981.

[FR Doc. 81–28197 Filed 9–28–81; 8:45 am]

BILLING CODE 7555–01–M

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permits Issued Under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357–7934.

SUPPLEMENTARY INFORMATION: On July 17 and August 13, 1981, the National Science Foundation published notices in the Federal Register of permit applications received. On September 16, 1981 permits were issued to:

David G. Ainley
Arthur L. DeVries
C. R. Grau
Gerald L. Kooyman
David E. Murrish
Donald B. Siniff
C. W. Sullivan
Wayne Trivelpiece

Charles E. Myers,

Division of Polar Programs.

[FR Doc. 81–28125 Filed 9–28–81; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Availability of Guidelines for Control Room Design Reviews

Notice is given that the Commission's Office of Nuclear Reactor Regulation has published NUREG–0700, Guidelines for Control Room Design Reviews. NUREG–0700 is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, NW, Washington, D.C., and in all other Commission Local Public Document Rooms.

These guidelines for control room design reviews provide the NRC staff guidance that should be followed in accomplishing the detailed control room design review described in Task I.D.1 of NUREG–0660, the NRC Action Plan. Guidance includes recommendations for planning the review process, review procedures, the assesment of identified human engineering discrepancies to select those that should be corrected, implementation of design improvements, and reporting. Detailed human engineering guidelines are included which provide benchmarks for the human factors quality of specific control room design features. The detailed control room design review is to be performed by all operating reactor licensees and applicants for operating licenses.

Draft guidelines for this detailed control room design review were published for public review and comment in July, 1980. (FR *45*, No. 163 at page 55551). The guidelines were identified as NUREG/CR–1580, Human Engineering Guide to Control Room Evaluation. A supplement to the guidelines, NUREG–0659, was subsequently published for review and comment in March, 1981. (FR *46*, No. 58 at page 18825.) Two public meetings were held in April, 1981, to discuss comments on NUREG–0659, and to review the staff's plans for publishing the complete set of guidelines for control room design reviews. NUREG–0700 is based on the draft guidelines and their supplement, and on the comments received on these two documents.

Copies of NUREG–0700 are available for purchase from the GPO Sales Program, Division of Technical Information and Document Control, Nuclear Regulatory Commission, Washington, D.C. 20555, and from the National Technical Information Service, Springfield, Virginia 22161.

For further information, contact Voss A. Moore, Division of Human Factors Safety, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 492–8448.

Dated at Bethesda, Maryland, this 24th day of September 1981.

Voss A. Moore,

Chief, Human Factors Engineering Branch, Division of Human Factors Safety.

[FR Doc. 81–28220 Filed 9–28–81; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance of Availability; Correction

The Nuclear Regulatory Commission is correcting an error which appeared in

the document published in FR Doc. 81-27126.

In FR Doc. 81-27126, appearing at page 46240, in the issue for Thursday, September 17, 1981, paragraph four (4) should read " . . . Attention: Docketing and Services Branch, by *November 16, 1981.*"

Dated at Washington, D.C. this 24th day of September 1981.

For the Nuclear Regulatory Commission.

Thomas R. Combs,

Office of the Secretary.

[FR Doc. 81-28219 Filed 9-28-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 48 to Facility Operating Licensing No. DPR-6, issued to the Consumers Power Company (the licensee), which revised the Technical Specifications for operation of the Big Rock Point Plant (the facility) located in Charlevoix County, Michigan. The amendment is effective as of its date of issuance.

The amendment authorizes operation of the reactor with one recirculation loop out of service.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since 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 February 25, 1980 and its supplements dated June 19, 1981, July 22, 1981, and September 3, 1981, (2) Amendment No. 48 to License No. DPR-6, 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. and at the Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washingon, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 21st day of September 1981.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 81-28218 Filed 9-28-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket-40-1341]

Availability of Draft Environmental Statement; Plan To Decommission Edgemont Uranium Mill, Fall River County, South Dakota; Tennessee Valley Authority, et al.

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulation 10 CFR Part 51, the Division of Waste Management staff has prepared a Draft Environmental Statement (DES) for the proposed decommissioning of the Edgemont Uranium Mill located in Edgemont, South Dakota. The proposed plan will involve removal of the uranium mill tailings from the existing location and transfer to a more remote site for disposal. Source Material License SUA-816 is currently held by the Tennessee Valley Authority for the Edgemont Uranium Mill. Amending Source Material License SUA-816 to authorize the decommissioning of the Edgemont Uranium Mill will result in actions which significantly affect the quality of the human environment. The principal alternatives considered in the DES include tailings impoundment siting alternatives, alternative waste management methods, and the alternative of no licensing action.

The Draft Environmental Statement (NUREG 0846) is available for inspection at the Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555. Copies of the DES are also being provided to the South Dakota State Clearinghouse, State Planning Bureau, State Capitol, Pierre, South Dakota, 57501. Requests for copies of the DES should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Division of Technical Information and Document Control.

The applicant's decommissioning plan, with subsequent revisions, submitted by the Tennessee Valley Authority is also available for public inspection and copying at the Commission's Public Document Room. Notice of the availability of the decommissioning plan and the place and date of a scoping meeting was published in the **Federal Register** on September 28, 1979 (44 FR 56055).

Interested persons may submit written comments on the DES for the Commission's consideration to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn.: Uranium Recovery Licensing Branch. Federal, State and local agencies are being provided with copies of the document. All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. Comments are due by November 9, 1981. Upon consideration of comments submitted with respect to the draft environmental statement, the Commission's staff will prepare a final environmental statement, the availability of which will be published in the **Federal Register.**

Dated at Silver Spring, Maryland this 16th day of September 1981.

For the Nuclear Regulatory Commission.

Harry J. Pettengill,

Section Leader, Uranium Recovery Licensing Branch, Division of Waste Management.

[FR Doc. 81-28221 Filed 9-28-81; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 11951; 812-4902]

Capitol Life Insurance Co., et al.; Application

September 22, 1981.

Notice is hereby given that the Capitol Life Insurance Company, ("Capitol Life"), a stock life insurance company organized under the laws of the State of Colorado, and Capitol Life Separate Account M, ("Separate Account"), 1600 Sherman Street, Denver, Colorado, 80203, established by Capitol Life and registered as a unit investment trust under the Investment Company Act of 1940 ("Act"), Merrill Lynch Basic Value Fund, Inc. ("BV"), Merrill Lynch Capital Fund, Inc. ("CF"), Merrill Lynch Special Value Fund, Inc. ("SV"), Merrill Lynch Ready Assets Trust ("RA") and Merrill Lynch Corporate Bond Fund, Inc. (originally, Merrill Lynch High Income Fund, Inc., reorganized and now

consisting of three separate investment portfolios, High Income Portfolio "HI," High Quality Portfolio "HQ," and Intermediate Term Portfolio "IT") (hereinafter collectively referred to as"Applicants"), 165 Broadway, New York, NY 10080, filed an application on June 23, 1981 for an amended order pursuant to Section 11 of the Act, approving certain offers of exchange, and, pursuant to Section 6(c) of the Act, exempting the Applicants from the provisions of Sections 22(d), 26(a) and 27(c)(2) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

The Separate Account was established by Capitol Life to fund certain variable annuity contracts ("Contracts") which are currently being offered and sold to the public pursuant to an effective registration statement under the Securities Act of 1933 (File No. 2-62668). The Separate Account presently consists of five Series, each of which invests solely in the shares of a designated open-end management investment company. Applicants BV, CF, SV, RA and HI serve as the underlying investment media for the existing Contracts issued by Capitol Life. It is presently proposed that two new Series, investing in the shares of HQ and IT, will be created in the Separate Account in addition to the aforementioned five Series.

The group and individual Contracts funded in the Separate Account are Direct Purchase Contracts, and are designed to provide annuity benefits to individuals and participants in various types of annuity plans or arrangements. These Contracts are offered to existing shareholders of BV, CF, SV and HI, but are not available to shareholders of RA. The exchange of Fund shares for such Contracts is at net asset value, except that a uniform fixed exchange fee applicable to each exchange of Fund shares is deducted at the time an initial purchase payment is received. It is proposed that Direct Purchase Contracts will be offered to existing shareholders of HQ and IT as well. Under the existing Contracts, individuals and participants may convert accumulation units from one Series of the Separate Account to any other Series. It is presently proposed that this right of conversion be extended to the Series investing in the shares of HQ and IT.

Applicants seek to amend and supplement the orders of November 8, 1978 (Release No. IC-10474) and September 4, 1979 (Release No. IC-10854) to supplement the exemptive relief previously granted (i) to add two portfolios of Merrill Lynch Corporate Bond, Inc., HQ and IT, as participants in the offers of exchange to the extent necessary to allow the exchange of portfolio shares for Contracts issued by Capitol Life funded in Separate Account Series investing in the shares of such portfolios, and to permit the conversion of accumulation units of each Series in the Separate Account to any other Series, and (ii) to amend the exemption previously granted from Section 22(d) of the Act to the extent necessary to permit variations in what may be deemed to be a sales load under Contracts issued in exchange for shares of HQ and IT, and (iii) to amend the exemptions previously granted from Sections 26(a) and 27(c)(2) of the Act to the extent necessary to include the two new Series.

Section 11

Section 11(a) makes it unlawful for any registered open-end investment company or principal underwriter therefor to make an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged unless the terms of the offer have first been submitted to, and approved by, the Commission. Section 11(c) of the Act provides that, irrespective of the basis of exchange, the provisions of subsection (a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

The orders contained in Release Nos. IC-10474 and IC-10854 approved the exchange of shares of BV, CF, SV and HI for Contracts funded in Separate Account Series investing in shares of those Funds at the relative net asset value of the securites to be exchanged less an exchange fee of $100. The prior orders also allowed the conversion or transfer of Contract accumulation units from any one of the five Series of the Separate Account to any other Series of the Separate Account then in existence at net asset value less a $10 conversion fee. Applicants propose that these exchange and conversion rights be extended so as to encompass the two new Series by including HQ and IT as participants in the offers of exchange approved by the previous orders.

Section 22(d)

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter therefor shall sell any redeemable security issued by such company except at a current offering price described in the prospectus. Rule 22d-3 under Section 22(d), in substance, permits the sale of variable annuity contracts with variations in the sales load, provided that the prospectus discloses such variations and the basis therefor, and provided further that such variations are not unfairly discriminatory.

Pursuant to an exemption from Section 22(d) of the Act granted in Release No. IC-10854, Contracts presently issued by Capitol Life in the Separate Account are permitted to be offered to current shareholders of BV, CF, SV and HI with a fixed exchange fee. Applicants note that it can be argued such fee would vary in percentage according to the amount invested.

Applicants propose that the order be amended to permit the aforementioned variations in percentage which might be deemed to be a variation in sales load with respect to the Contracts to be offered to shareholders of HQ and IT for purposes of that section. Applicants warrant that, if such an exemption is granted, the prospectuses used in the offer and sale of the Contracts will fully disclose all such variations, as well as the circumstances under which they may occur.

Sections 27(c)(2) and 26(a)

Section 27(c)(2), in relevant part, prohibits the issuer of a periodic payment plan certificate and any depositor or underwriter for such issuer from selling such periodic payment plan certificate unless the proceeds of all payments (other than any sales load) are deposited with a qualified bank acting as trustee or custodian, and held under an indenture or agreement containing specified provisions. Section 26(a) requires that such indenture or custodianship agreement must provide, *inter alia*, that the bank (i) shall have possession of all property of the unit investment trust and segregate and hold the same in trust subject only to the charges and collections specifically allowed under clauses (A), (B) and (C) of such section until distribution to the security holders of the trust; (ii) shall not resign until the trust has been liquidated or a successor has been appointed; (iii) may collect from the income and, if necessary, from the corpus of the trust such fees for services provided for in the agreement; (iv) shall not allow as an expense any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as

the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

Pursuant to an exemption from the aforementiond provisions of the Act granted in Release Nos. IC–10474 and IC–10854, Capitol Life acts as custodian of the Separate Account; however, all such assets are held for safekeeping pursuant to an agreement between Capitol Life and the State Street Bank and Trust Company of Boston, Massachusetts ("Bank"). Insofar as the Contracts proposed to be funded in the Series investing in shares of HQ and IT in the Separate Account are not included within the terms of the orders issued in Release Nos. IC–10474 and IC–10854, the Applicants request that the orders of exemption from Sections 26(a) and 27(c)(2) be amended to the extent necessary (1) to make the requirement of a trust inapplicable to such Contract Series, (ii) to allow the Separate Account to accept "book shares" issued by the Funds in lieu of actual stock certificates and (iii) to allow the deduction of a $5.00 fixed surrender charge on partial surrenders from the Separate Account.

Applicants have consented that the request for the foregoing exemptions may be made subject to the following conditions: (1) that the deductions for administrative services shall not exceed such reasonable amount as the Commission shall prescribe, and the Commission may reserve jurisdiction for such purpose, and (2) that the payment of sums and charges out of the assets of the Separate Account shall not be determined to be exempted from regulation by the Commission by reason of the requested amended order, provided that Applicants' consent to this condition shall not be determined to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets other than charges for administrative services, and Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums and charges.

Section 6(c)

Section 6(c) authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act and Rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested party may, not later than October 16, 1981 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his/her interest, the reason for such request and the issues of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following October 16, 1981 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing, if ordered, and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81–28171 Filed 9–28–81; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–18115; File No. SR–PSE–81–16]

Pacific Stock Exchange Inc.; Proposed Rule Change By Self-Regulatory Organization

In the matter of proposed rule change by the Pacific Stock Exchange Incorporated relating to conduct on the Equity Trading Floor.

Comments requested on or before October 20, 1981.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 10, 1981, the Pacific Stock Exchange filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change and Procedure Advice relate to conduct on the Equity Trading Floor. Violations of standards of conduct applicable to members and persons associated with member organizations are subject to penalties which are based upon the nature and frequency of the violation. Due process procedures have been provided for those circumstances where a member, member organization or associated person is alleged to have violated rules, policies or procedures relating to such conduct.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendment to Rule I of the Rules of the Board of Governors of the PSE as well as the new Equity Floor Procedure Advice 1–B relate to conduct on the Equity Trading Floor. The proposed rule amendment authorizes the Joint Equity Floor Trading Committee to fine members in cases where conduct on the Equity Trading Floor will impair the maintenance of a fair and orderly market or impair confidence in the operations of the Exchange. The proposed rule amendment also contains due process procedures to be followed in circumstances where a member or associated person of a member organization is alleged to have violated rules, policies or procedures relating to conduct on the Equity Trading Floor and a Floor Citation is issued with respect to such violation.

Equity Floor Procedure Advice 1–B sets forth certain standards of conduct applicable to members and associated persons of member organizations while

on the Trading Floor. Violations of these standards are subject to penalties which are based upon the nature and frequency of the violation.

The proposed rule changes are consistent with Section 6(b) of the Securities Exchange Act of 1934, in general, and further the objectives of Section 6(b)(6) and 6(b)(7) of the Act, in particular, in that they provide for appropriate disciplinary action for violations of Exchange Rules and standards of conduct and provide a fair procedure for the disciplining of members and persons associated with member organizations.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On or before November 3, 1981, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before October 20, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-28172 Filed 9-28-81; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-11250]

Tenneco Inc.; Application and Opportunity for Hearing

September 23, 1981.

Notice is hereby given that Tenneco, Inc. (the "Company") has filed an application pursuant to clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that trusteeship of The Chase Manhattan Bank ("Chase") under Indentures of the Company dated as of December 1, 1961, April 1, 1962, September 1, 1962, June 1, 1963, April 1, 1964, December 1, 1964, September 1, 1965, May 1, 1967, February 1, 1974, May 1, 1975, April 1, 1977, as amended, April 15, 1978, June 15, 1979, February 1, 1980, May 1, 1980, January 15, 1981, April 1, 1981, June 1, 1981 and June 1, 1981, (the "Qualified Indentures"), which were heretofore qualified under the Act, and trusteeship by Chase under Indentures of the County of Sweetwater, Wyoming, to be dated as of August 1, 1981 (the "New Indentures"), which will not be qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chase from acting under the Qualified Indentures and under the New Indentures. The Bonds issued pursuant to the New Indentures have been guaranteed by the Company pursuant to Guaranty Agreements between the Company and the County, dated as of August 1, 1981 (the "Guaranty Agreements").

The present application, filed pursuant to clause (ii) of Section 310(b)(1) of the Act (as set forth in each of the Qualified Indentures), seeks to exclude the New Indentures from the operation of Section 310(b)(1) of the Act.

The effect of the proviso contained in clause (ii) of Section 310(b)(1) of the Act on the matter of the present application is such that the New Indentures may be excluded from the operation of Section 310(b)(1) of the Act (as set forth in each of the Qualified Indentures) if the Company shall have sustained the burden of proving, by this application to the Commission and after opportunity for hearing thereon, that the trusteeship of Chase under the Qualified Indentures and under the New Indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chase from acting as trustee under the Qualified Indentures and the New Indentures.

The Company alleges that:

(1) The County of Sweetwater, Wyoming proposes to issue and sell $18,560,000 aggregate principal amount of its 9½% Pollution Control Revenue Bonds (Tenneco Oil Company Project) Series 1981A and $1,000,000 aggregate principal amount of its 9½% Pollution Control Revenue Bonds (Tenneco Oil Company Project) Series 1981B (the "New Bonds") to be issued under the New Indentures. The New Bonds will be guaranteed by the Company pursuant to the Guaranty Agreements;

(2) The New Bonds are being issued by a political subdivision of a State of the United States of America. The New Bonds are therefore exempt from the registration requirements of the Securities Act of 1933 and the New Indentures are exempt from the qualification provisions of the Trust Indenture Act of 1939;

(3) At July 1, 1981, the Company has outstanding: $3,500,000 of its 5¼% Debentures due December 1, 1981, $7,926,000 of its 5% Debentures due 1982, $7,264,000 of its 5% Debentures due September 1, 1982, $8,517,000 of its 5% Debentures due 1983, $12,060,000 of its 5⅛% Debentures due 1984, $9,118,000 of its 5% Debentures due December 1, 1984, $19,629,000 of its 5¼% Debentures due 1985, $23,178,000 of its 6½% Debentures due 1987, $79,300,000 of its 9% Debentures due 1994, $118,000,000 of its 9⅞% Debentures due 2000, $175,000,000 of its 8⅜% Debentures due 2002, $200,000,000 of its 8⅞% Debentures due 2003, $250,000,000 of its 9½% Debentures due 2004, $150,000,000 of its 11⅞% Notes due 1983, $250,000,000 of its 12⅛% Debentures due 2005, $200,000,000 of its 13⅜% Notes due 1991, $200,000,000 of its 14½% Debentures due 2006, $200,000,000 of its 14½% Notes due 1991, and $100,000,000 of its 15% Debentures due 2006

(collectively, the "Qualified Debentures and Notes") issued under the Qualified Indentures (dated December 1, 1961, April 1, 1962, September 1, 1962, June 1, 1963, April 1, 1964, December 1, 1964, September 1, 1965, May 1, 1967,

February 1, 1974, May 1, 1975, April 1, 1977, (with Supplemental Indenture dated November 15, 1977), April 15, 1978, June 15, 1979, February 1, 1980, May 1, 1980, January 15, 1981, April 1, 1981, June 1, 1981 and June 1, 1981, respectively) executed by the Company and Chase, as trustee. The Qualified Debentures and Notes were registered under the Securities Act of 1933 (File Nos. 2-19273, 2-19940, 2-20654, 2-21450, 2-22137, 2-22929, 2-23953, 2-26360, 2-49852, 2-53402, 2-58345, 2-61001, 2-64660, 2-66493, 1-67547, 2-70482, 2-71345, 2-72606 and 2-72606, respectively) and the Qualified Indentures were qualified under the Trust Indenture Act of 1939;

(4) The Qualified Indentures and the Guaranty Agreements are wholly unsecured, and rank pari passu inter se;

(5) The Company's guaranty of the New Bonds is neither superior nor inferior in right of payment to the qualified Debentures and Notes;

(6) The Company is not in default under the Qualified Indentures or the Qualified Debentures and Notes;

(7) Such differences as exist between the Qualified Indentures and the New Indentures are not likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chase from acting as trustee under any of the Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after October 21, 1981, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939. Any interested person may, no later than October 20, 1981 at 5:30 P.M., Eastern Daylight Time, in writing, submit to the Commission, his views or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

By the Commission, by the Division of Corporate Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-28170 Filed 9-28-81; 8:45 am]

BILLING CODE 8010-01-M

SYNTHETIC FUELS CORPORATION

Request for Proposals for Computer Services

AGENCY: United States Synthetic Fuels Corporation.

ACTION: Notice of request for proposals for computer services.

SUMMARY: This notice announces that the U.S. Synthetic Fuels Corporation requires computer services including the following: hardware, software, communications, analyst services and teleprocessing. Requests for copies of the RFP should be in writing. The closing date for receipt of proposal responses is October 7, 1981, at 4:30 p.m. Return to the U.S. Synthetic Fuels Corporation, 2000 L Street, N.W., Washington, D.C. 20586, Attention: Saul Kravecas.

The United States Synthetic Fuels Corporation.

John M. Nicholas,

Acting Vice President, Administration.

[FR Doc. 81-28148 Filed 9-28-81; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular; Public Debt Series No. 30-81]

Treasury Bonds of 2001; Invitation for Tenders

Washington, September 23, 1981.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $1,750,000,000 of United States securities, designated Treasury Bonds of 2001 (CUSIP No. 912810 CX 4). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated October 7, 1981, and will bear interest from that date, payable on a semiannual basis on May 15, 1982, and each subsequent 6 months on November 15 and May 15 until the principal becomes payable. They will mature November 15, 2001, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2 The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered, and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving Time, Wednesday, September 30, 1981. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, September 29, 1981.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 95.000. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Wednesday, October 7, 1981. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations govering United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, October 5, 1981. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the puchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securiteis presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities alloted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered sucurities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securiteis presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for difinitive securities of

this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations govering the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

Treasury Securities—Treasury announces auction of Bonds of 2001

Supplemental Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the departmental procedures applicable to such regulations.

[FR Doc. 81-28243 Filed 9-25-81; 11:16 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Maine Veterans Memorial Cemetery Expansion, Augusta, Maine; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts which may occur as a result of the State of Maine Expansion of the Maine Veterans Memorial Cemetery, Augusta, Maine. The Maine Veterans Memorial Cemetery is the only State veterans cemetery in the area with land available for expansion.

The proposed expansion plans include 3,300 gravesites, a new entrance road from Route 27, a new internal circulation road with a scenic turnout, a water well and storage capacity for water requirements for approximately 50 acres, and various other minor road improvement projects.

The only alternatives considered were the proposed action described above and the "no action" alternative. The "no action" alternative would continue the existing land use patterns and the provision of gravesites until sometime in 1985 when the cemetery would no longer have gravesites available to new interments.

There are no anticipated long-term adverse impacts associated with this project. Short-term impacts will occur during the construction phase for environmental elements such as air quality, noise, erosion/sedimentation, and aesthetic values of the surrounding landscape. Construction specifications will be applied to mitigate, to the greatest extent possible, all construction impacts such as fugitive dust, fumes, noise, erosion/sedimentation and the visual impacts. The specifications require the most practicable applications of proper engineering and maintenance procedures to control those potential environmental problems. The project will comply with the required local, State, and Federal Government codes and regulations.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity, as defined by the Council on Environmental Quality (Title 40 CFR 1508.27).

This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs, Room 950, Veterans Administration, 1425 K Street, NW., Washington, D.C., (202–389–2526). Questions or requests for single copies of the Environmental Assessment may be addressed to: Director, Office of Environmental Affairs, 810 Vermont Avenue, NW., Washington, D.C. 20420.

Dated: September 22, 1981.

Robert P. Nimmo,

Administrator.

[FR Doc. 81-28127 Filed 9-28-81; 8:45 am]

BILLING CODE 8320-01-M

Rehabilitation Engineering and Outpatient Clinic, New York, N.Y.; Availability of Final Environmental Impact Statement

Notice is hereby given that a document entitled "Final Environmental Impact Statement, for the Rehabilitation Engineering and Outpatient Clinic, Veterans Administration Medical Center, New York, New York", dated August 1981, has been prepared as required by Section 102(2)(C) of the National Environmental Policy Act of 1969.

The preferred alternative proposes to construct a multilevel addition to the existing Veterans Administration Medical Center (VAMC) in New York (Manhattan). The new structure would contain space for the VA Rehabilitation Engineering Center and consolidate outpatient facilities at the VAMC from their satellite location at 252 7th Avenue, New York. Some functions would stay at the 7th Avenue location, including the VA Department of Veterans Benefits, the prosthetics manufacturing center and the methadone drug program. The VA investigated alternative project actions, but through examination concluded that the only other viable alternate was a No Action Alternative. This alternative leaves existing facilities in place with no significant changes.

The Final Environmental Impact Statement responds to comments received on the Draft Environmental Impact Statement (May 1981). The comment period on the Draft EIS extended to July 13, 1981. The document is being placed for public examination in the Veterans Administration office in Washington, DC. Persons wishing to examine the document may do so at the following office: Mr. Willard Sitler, Director, Office of Environmental Affairs, Room 950, Veterans Administration, 1425 K Street, NW., Washington, DC. Single copies of the Draft EIS may be obtained on request to: Director, Office of Environmental Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2525.

Dated: September 22, 1981.

Robert P. Nimmo,

Administrator.

[FR Doc. 81-28196 Filed 9-28-81; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 188
Tuesday, September 29, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Civil Aeronautics Board	1
Commodity Futures Trading Commission	2
Federal Communications Commission	3, 4, 5
Federal Energy Regulatory Commission	6
Federal Home Loan Bank Board	7, 8
Federal Reserve System	9, 10
International Trade Commission	11
National Transportation Safety Board	12
Nuclear Regulatory Commission	13

1

CIVIL AERONAUTICS BOARD.

[M-332; 9/24/81]

Short Notice and Closure of Board Meeting

TIME AND DATE: 9:30 a.m., September 23, 1981.

PLACE: Room 1011, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT: 1. U.S.-Scandinavia Negotiations. (BIA).

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-1474-81 Filed 9-25-81; 3:28 pm]

BILLING CODE 6320-01-M

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., Wednesday, September 30, 1981.

PLACE: 2033 K Street, N.W., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Proposed Contract Market Designation CBOT Short-Term T-Notes
—Proposed Contract Market Designation CMF Italian Lira

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1466-81 Filed 9-25-81; 10:50 am]

BILLING CODE 6351-01-M

3

FEDERAL COMMUNICATIONS COMMISSION.

FCC to Hold a Closed Commission Meeting, Wednesday, September 30, 1981

The Federal Communications Commission will hold a Closed Meeting on the subjects listed below on Wednesday, September 30, 1981, following the Open Meeting which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

Hearing—1—Application for Review of a Memorandum Opinion and Order by the Chief, Mobile Services Division, Common Carrier Bureau, which designated for hearing the application of Radio and Electronics Service Company, Inc. d.b.a. Mobilfone, and Radio Telephone Communications for new paging frequencies at Fort Walton Beach and Panama City, Florida (CC Docket No. 81-328).

Hearing—2—Application for Review of a Memorandum Opinion and Order by the Chief, Mobile Services Division, Common Carrier Bureau, which designated for hearing the application of AAA Anserphone Inc.-Jackson for a new paging frequency at Brookhaven, Mississippi (CC Docket No. 81-342).

Hearing—3—Application for Review in the Columbia, South Caroline comparative FM proceeding (BC Docket Nos. 78-297, 78-298).

Hearing—4—Petition for Reconsideration in the Phoenix, Arizona comparative FM proceeding (BC Docket Nos. 78-40, 78-41, 78-43).

General—1—FY 1982 Budget Allocations.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen P. Peratino, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: September 23, 1981.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-1471-81 Filed 9-25-81; 2:55 pm]

BILLING CODE 6712-01-M

4

FEDERAL COMMUNICATIONS COMMISSION.

FCC to hold open Commission Meeting, Wednesday, September 30, 1981

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, September 30, 1981, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

General—1—*Title:* In re: General Docket 80-740, Amendment of Part 2 of the Rules regarding use of the High Frequency radio spectrum. *Summary:* The Commission adopted a NPRM on 25 November 1980 proposing changes to Part 2 affecting fixed and land mobile services use of the spectrum below 25 MHz. the item before the Commission discusses the public's response to the NPRM and the merits of the proposed actions.

General—2—*Title:* Amendment of Parts 2, 83 and 87 to make frequencies in the band 415-435 kHz available for Aeronautical Navigation, to add a footnote permitting assignments to the aeronautical radionavigation servcie in the band 435-490 kHz, to designate 518 kHz for transmission of navigational and meteorological warnings, and to add Maritime Mobile as a primary service in the band 510-525 kHz. *Summary:* The FCC will consider whether to adopt a Notice of Proposed Rule Making which will amend the national Table of Allocations to provide more spectrum space for aeronautical radionavigation and maritime mobile services. The Notice also proposes footnotes which will permit assignments to Government aeronautical radiobeacons in the band 435-490 kHz and permit broadcasts of navigational and meteorological warnings to ships by U.S. Coast Guard stations.

General—3—*Title:* Application for review of a ruling by the Chief, Broadcast Bureau, which granted an FOIA request by Knoxville Broadcasting Corporation to inspect annual financial reports filed by television station WTVK, Knoxville, Tennessee. (FOIA Control No. 81-6) *Summary:* The Commission will consider whether to grant or deny an application for review filed by station WTVK, Knoxville, Tennessee, of Bureau action authorizing Knoxville Broadcasting Corp. to inspect WTVK's annual financial reports (Forms 324).

General—4—*Title:* Waiver of the Commission's Rules regarding the submission of FCC Form 740 for importation of certain electronic equipment. *Summary:* By Order adopted May 21, 1981, the Commission waived the importation rules which require that the FCC Form 740 be attached to the entry papers of RF devices imported into the U.S. That waiver expires October 1, 1981. The Commission is considering an extension of

that waiver until budgetary and personnel matters can be resolved.

General—5—*Title:* Policy Research Funding. *Summary:* The Office of Plans and Policy requests funding approval of policy research studies for FY 1982.

Private Radio—1—*Title:* Petition for reconsideration of Quiet Zone procedures for amateur radio stations in repeater operation. *Summary:* The Commission will consider whether to grant or deny the petition for reconsideration.

Private Radio—2—*Title:* Amendment of the Amateur Radio Service Rules (part 97) regarding effective radiated power (ERP) limitations on stations in repeater operations. *Summary:* The Commission will consider whether to adopt a Notice of Proposed Rulemaking proposing to amend Part 97 of the Rules to relax limitations on effective radiated power (ERP) for amateur radio stations in repeater operation on frequencies between 52 and 54 MHz. The proposal would also extend these limitations to repeater operations between 29.5 and 29.7 MHz.

Private Radio—3—*Title:* Memorandum Opinion and Order concerning application for review, filed by John Fabick Tractor Company, of Private Radio Bureau action denying its request for rule waivers and dismissing its applications for authority to use a VHF band Forestry Conservation Radio Service frequency in the Business Radio Service. *Summary:* the FCC will consider whether to grant or deny the application for review, filed by John Fabick Tractor Company, or Private Radio Bureau action which denied Fabick's request for waivers of Sections 90.25(b) and 90.75(b) of the rules to permit its use of a VHF band frequency allocated to the Forestry Conservation Radio Service for a wide area land mobile radio system in portions of Illinois and Missouri in the Business Radio Service.

Private Radio—4—*Title:* Petition for reconsideration of Order amending Parts 2 and 97 to specify power limits for amateur radio stations, and to provide for amateur satellite operation within certain military areas. *Summary:* The Commission will consider whether to grant or deny the petition for reconsideration.

Private Radio—5—*Title:* Amendment of Parts 1 and 90 of the Commission's Rules and Regulations concerning resubmitted applications. *Summary:* The FCC will consider whether to amend its rules to extend to 90 days the time applicants for frequencies below 470 MHz have in which to resubmit returned applications without losing their place in the processing line.

Cable Television—1—*Title:* "Petition for Reconsideration" (CSR-1364, CSR-1811) filed January 22, 1981, by Henson Aviation, Inc. *Summary:* Henson Aviation, Inc., licensee of Station WHAG-TV (NBC, Channel 25), Hagerstown, Maryland, seeks reconsideration of the Commission's decision in *Henson Aviation, Inc. (WHAG-TV)*, FCC 80-720, 83 FCC 2d 405 (1980). Henson's petition is opposed by Potomac Valley Cable Television Co., Inc., and by Warner Amex Cable Communications, Inc., operators of area cable television systems, and Henson has replied.

Renewal—1—*Title:* Amendment of Section 73.1020 of the Commission's rules dealing with broadcast station license periods. *Summary:* The Commission considers amending Section 73.1020 of its rules to implement the new seven year and five year radio and television broadcast license term provisions of Pub. L. 97-35, the Omnibus Budget Reconciliation Act.

Aural—1—*Title:* Application by Nora Blatch Educational Communications Foundation, Inc., permittee of FM Station WWOZ, New Orleans, Louisiana, to extend its construction permit. *Summary:* Xavier University and Notre Dame Seminary of the Archdiocese of New Orleans has filed an application for review of the Bureau action granting the application of WWOZ to extend its construction permit.

Aural—2—*Title:* Memorandum opinion and order which imposes liability for forfeiture on Equivox, Incorporated, permittee of KRMQ(FM), Provo, Utah. *Summary:* The FCC considers imposition of a forfeiture previously adopted in a notice of apparent liability.

Television—1—*Title:* Application for Review and request for stay filed by Video 44 (WSNS-TV, Chicago) directed against Broadcast Bureau grant of minor change application of WFBN(TV), Joliet, Illinois. *Summary:* The Commission considers the application for review and request for stay filed by licensee of STV Station WSNS(TV), Chicago, against Broadcast Bureau's grant of application to change transmitting facilities of STV Station WFBN(TV) from Sears Building in Chicago to Hancock Center, also in Chicago. Question is whether grant of original application for CP for new station can be vacated and application designated for hearing on *de facto* reallocation issue.

Television—2—*Title:* Application BPTTV-6096) of Washoe County School District for authority to construct a new television translator station to serve Reno, Nevada and petition to deny filed by Teleprompter Corporation. *Summary:* The Commission will consider the merits of the petition to deny and will determine whether a grant of applicant's proposal to provide Reno with its first noncommercial educational television service by rebroadcasting the signal of Station KVIE-TV Sacramento, California, is in the public interest.

Television—3—*Title:* Application of Capital Communications, Inc. for authority to construct new television translator at Orangeburg (BPTTV-800311IC) and at Newberry (BPTTV-800312IB), South Carolina and petition to deny. *Summary:* The Commission will consider the merits of the petitions to deny and determine whether grant of applicant's proposals will serve the public interest.

Broadcast—1—*Title:* Application for review of the Bureau's denial of a request by Chartwell Communications Group for a declaratory judgment interpreting various subscription television ("STV") rules. *Summary:* The Commission will review the matter and either affirm the Bureau's action or have the Bureau interpret the STV rules at issue.

Broadcast—2—*Title:* Review of Action denying the assignment of an FM channel to Las Piedras, Puerto Rico. *Summary:* The Commission will consider a request to review the Broadcast Bureau's refusal to assign Channel 269A to Las Piedras, Puerto Rico, as its first FM channel. The request also involves a substitution of channels for Station WZAR, Ponce, Puerto Rico.

Broadcast—3—*Title:* Memorandum Opinion and Order, Amendment of § 73.22, Table of Assignments, AM Broadcast Stations, to "Assign" the frequency 770 kilohertz to Albuquerque, New Mexico, for Class I-A operation, and Application of Hubbard Broadcasting, Inc. for modification of AM Broadcast Station KOB, Albuquerque, New Mexico. *Summary:* The Commission considers: Hubbard Broadcasting's Applications for Review of the Broadcast Bureau's dismissal of the above-referenced petition and application.

Broadcast—4—*Title:* Adoption of rule requiring public service announcements regarding the Commission's Consumer Assistance Office. *Summary:* The Commission will consider the request of Citizens Communications Center to reconsider a decision to deny its rule making petition concerning the Commission's Consumer Assistance Office.

Broadcast—5—*Title:* Revision of Applications for Renewal of License of Commercial and Noncommercial AM, FM, and Television Licensees. *Summary:* The Commission will consider a petition for reconsideration of the Memorandum Opinion and Order in BC Docket No. 80-253, which implemented a simplified renewal application procedure.

Broadcast—6—*Title:* Amendment of Part 73 of the Commission's Rules and Regulations to Eliminate the Requirement for Type Approval of Aural Modulation Monitors. *Summary:* The Commission will consider whether to adopt a *Notice of Proposed Rulemaking* looking to delete the requirements for type approval of aural modulation monitors.

Broadcast—7—*Title:* Further Notice of Proposed Rule Making in the matter of amending the Commission's rules regarding subscription television. *Summary:* The Commission will consider commencing another phase of an on-going proceeding evaluating the rules governing the subscription television service.

Broadcast—8—*Title:* Amendment of Form 324 Annual Financial Report of Broadcast Stations. *Summary:* The Commission will consider the adoption of a Further Notice of Proposed Rule Making proposing a set of options regarding the collection of financial data from commercial broadcasters.

Complaints and Compliance—1—*Title:* Application of Smith Broadcasting Company, Inc., licensee of WIXK(AM) and (FM), New Richmond, Wisconsin for review of Broadcast Bureau's action assessing a forfeiture for the broadcast of lottery information. *Summary:* Licensee of WIXK(AM) and (FM), New Richmond, Wisconsin has requested the Commission to review order of the Broadcast Bureau assessing a $500 forfeiture for the broadcast of lottery information. Licensee argues that the Bureau failed to make a

distinction between lottery information broadcast by stations on behalf of profit-making businesses and those of civic nonprofit and charitable organizations. The Commission must decide whether to grant the application for review and if so whether the forfeiture should be remitted or reduced.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: September 23, 1981.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-1472-81 Filed 9-25-81; 2:51 pm]

BILLING CODE 6712-01-M

5

FEDERAL COMMUNICATIONS COMMISSION.

FCC to hold open Commission meeting, Thursday, October 1, 1981

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, October 1, 1981, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M. Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

General—1—*Title:* Petition for reconsideration (Docket No. 18948/Gen Docket No. 80-108) to make compliance with requirements for tools, spare parts, etc., on board compulsory radar equipped ships voluntary. *Summary:* The FCC will consider whether to grant or deny a petition for reconsideration in Docket No. 18948/Gen Docket No. 80-108. The petition requests that a rule which mandates the carriage of specified tools, spares, etc., on board ships compulsorily equipped with radar be revised to make carriage of the specified equipment voluntary. The subject rule was adopted in a proceeding implementing a new regulation of the International Convention for the Safety of Life at Sea, 1974. The FCC will discuss the need for this specific rule.

General—2—*Title:* Implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979. *Summary:* The Commission is soliciting public comments, through a series of documents in this proceeding (Docket 80-739), on national implementation of the Final Acts of the 1979 World Administrative Radio Conference. This Notice of Inquiry considers frequency allocations for the portion of radio spectrum from 40.5 GHz through 400 GHz and new emission designators.

Private Radio—1—*Title:* Deregulation of emission types and authorization of additional digital codes in the Amateur Radio Service. *Summary:* The Commission will consider whether to adopt a Fourth Report and Order terminating the proceeding in Docket 20777 concerned with deregulation of the rules regarding authorized emissions in the Amateur Radio Service. The Commission will also consider whether to adopt a Notice of Proposed Rule Making proposing to permit the use digital codes, other than those currently authorized by the rules, on amateur radio frequencies above 50 MHz.

Private Radio—2—*Title:* In the matter of Amendment of Sections 90.385 and 90.233 of the Commission's Rules to allow transmission of non-voice signals at 800 MHz. *Summary:* The Federal Communications Commission has before it a proposal initiated internally to amend Sections 90.385 and 90.233 of the Commission's Rules to allow systems operating in the 806-821 MHz and 851-866 MHz bands (800 MHz band) to transmit non-voice signals on a secondary, non-interference basis.

Private Radio—3—*Title:* Amateur radio station identification rules modification. *Summary:* The Commission will consider whether or not to adopt: (1) A Report and Order which would require identification at the end of each communication and every 10 minutes or less during a communication; and, would delete the requirement to give the other station's call sign, except in international third party communications; and (2) An Order which would dismiss petition in RM-3714, which concerns identification requirements.

Common Carrier—1—*Title:* Allocation of aggregate depreciation reserve for each Bell company to subaccounts. *Summary:* The Commission has under consideration the allocation of the overall book reserve to each of the plant accounts for each of the Bell System operating companies. Reserves must be maintained in this detail in order to calculate depreciation rates on a remaining-life basis. The proposed allocation is based upon studies which were prepared by the companies and the staffs of the respective state commissions and the FCC. In addition, by a Public Notice released 1-23-81, comments of other parties have been considered. This item is a part of the Commission's continuing program to prescribe depreciation rates for subject companies, as provided for in the communications Act of 1934, as amended.

Common Carrier—2—*Title:* Application of Satellite Business Systems for authority to construct a fourth communications satellite to be used as an on-ground spare (File No. 1688-DSS-P-80). *Summary:* The Commission considers this application for a new domestic satellite as an on-ground spare.

Common Carrier—3—*Title:* Application of Western Union Telegraph Company for authority to construct and launch a sixth space station in the domestic Fixed-Satellite Service (File No. 732-DSS-P/LA-81). *Summary:* The Commission considers this application for a new domestic satellite and the related pleadings.

Common Carrier—4—*Title:* Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations. *Summary:* The Commission will consider a Notice of Inquiry and Proposed Rulemaking concerning orbital separations in the 4/6 and 12/14 GHz bands, orbital assignment policies and related revisions of Part 25 of the rules.

Renewal—1—*Title:* License renewal applications of Stations KMPH(TV), Visalia, California, and KXKS/KKJY(FM), Albuquerque, New Mexico. *Summary:* The Commission will consider whether the EEO programs of the above stations are sufficient and whether grant of their license renewal applications is in the public interest.

Television—1—*Title:* Amendment of the Rules as to the application and authorization requirements for remote control operation of TV broadcast stations. *Summary:* The Commission will consider revising the procedures for granting remote control authorizations for TV broadcast stations.

Broadcast—1—*Title:* Memorandum Opinion and Order, BC Docket No. 78-253. *Summary:* The Commission considers several petitions for reconsideration and clarification of its April 9, 1981 Order discontinuing acceptance of TV translator and low-power applications.

Broadcast—2—*Title:* Amendment of the Commission's Rules, Section 73.1202, concerning the requirement that licensees retain letters received from the public. *Summary:* The Commission will consider the issuance of a Notice of Proposed Rule Making concerning the elimination of Section 73.1202 of the Rules. That section requires that all commercial licensees maintain an inspection file of letters received from the public.

Broadcast—3—*Title:* Christian Broadcasting Network, Inc.'s request for waiver of Section 73.658(j)(4) of the Commission's Rules. *Summary:* Petitions for rule making and for waiver of Section 73.658(j)(4) of the Commission's Rules are considered.

Broadcast—4—*Title:* Petition of Peninsula Communications, Inc. for termination of FM Translator K265AG, Homer, Alaska. *Summqry:* The Commission will consider Petitioner Peninsula Communications, Inc.'s contentions that KSRM, Inc., licensee of FM translator K265AG violated Section 74.1232(d) of the Commission's rules and that KSRM, Inc has acted in a competitive manner, jeopardizing the existence of KGTL-FM, a local full-service station.

Broadcast—5—*Title:* Elimination of harmful interference to radio communications involving safety of life or protection of property. *Summary:* The Commission will consider proposed amendments to Part 74 of the Commission's Rules to eliminate radio interference which jeopardizes safety of life and protection of property.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from

Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: September 23, 1981.

William J. Tricarico,

Secretary, Federal Communications.

[S-1473-81 Filed 9-25-81; 2:55 pm]

BILLING CODE 6712-01-M

6

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., September 30, 1981.

PLACE: Room 9306, 825 North Capitol Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda—733rd Meeting, September 30, 1981, Regular Meeting (10 a.m.)

CAP-1. Project No. 3473-002, Jack M. Fuls; Project No. 3784-000, Deschutes Reclamation and Irrigation Co., Central Oregon Irrigation District and North Unit Irrigation District

CAP-2. Project No. 5013, Modesto Irrigation District

CAP-3. Project No. 4376-000, High Country Resources and Rocky Creek Project

CAP-4. Project No. 3892-000, Georgia-Pacific Corp., Project No. 4244-000, Long Lake Energy Corp.

CAP-5. Project No. 3418, Pennsylvania Renewable Resources, Inc.; Project No. 3475, The Town of Clintwood, Virginia; Project No. 4152, City of Bedford, et al.

CAP-6. Project No. 4297, Metropolitan District of Hartford, Connecticut

CAP-7. Project No. 3493-000, City of Summersville, West Virginia; Project No. 3683-000, Mitchell Energy Co.; Project No. 3809-000, Old Dominion Electric Cooperative; Project No. 4361-000, City of Bedford, et al.

CAP-8. Project No. 3610, Banister Development, Ltd.

CAP-9. Project No. 2004, Holyoke Water Power Co.

CAP-10. Project No. 3169, Plains Electric Generation and Transmission Cooperative, Inc.; Project No. 3439, Western States Energy and Resources, Inc.; Project No. 4219, City of Albuquerque, New Mexico

CAP-11. Project No. 4355, East Columbia Basin Irrigation District, Quincy-Columbia Basin Irrigation District and South Columbia Basin Irrigation District

CAP-12. Project No. 3789-000, Enagenics, Inc.; Project No. 4535-000, Truckee-Carson Irrigation District

CAP-13. Project No. 3322-000, Public Utility District No. 1 of Mason County, Shelton, Washington

CAP-14. Docket No. ER81-387-001, Central Power & Light Co.

CAP-15. Docket No. ER81-649-000, Central Vermont Public Service Corp.

CAP-16. Docket No. ER81-654-000, Illinois Power Co.

CAP-17. Docket No. ER81-132-000, The Cincinnati Gas & Electric Co.; Docket No. ER81-305-000, The Union Light, Heat & Power Co.

CAP-18. Docket No. ER80-5, Minnesota Power & Light Co.

CAP-19. Docket No. ER81-538, Carolina Power & Light Co.

CAP-20. Docket No. ES81-69-000, Pacific Power & Light Co.

Consent Miscellaneous Agenda

CAM-1. Docket No. QF81-42, John Root

CAM-2. Docket No. RM80-69, Annual report of gas supply for certain natural gas pipelines: Form 15

CAM-3. Docket No. RM79-76 (Texas—9 addition), high-cost gas produced from tight formations

CAM-4. Docket No. GP81- -000, State of Louisiana, section 107(c) NGPA determination, Ace Drilling Services, Inc., Hootkins-Smith Louisiana, Ltd., and Reliance Trusts, JD81-35124, et al.

CAM-5. Docket No. GP81- -000, Commonwealth of Virginia, section 108 NGPA determination, Ashland Exploration, Inc., W.H. Matney No. 3, FERC Nos. JD79-10060 and JD81-25503

CAM-6. Docket Nos. RM78-23 and RM81-37, El Paso Natural Gas Co.

CAM-7. Docket Nos. RA81-49-000, RA81-55-000, RA81-56-000, and RA81-57-000, Young Refining Corp.

Consent Gas Agenda

CAG-1. Docket No. TA82-1-42-000, (PGA2-1, IPR82-1 and TT82-1, Transwestern Pipeline Co.

CAG-2. Docket No. TA81-2-17-004 (PGA81-2a, TT81-2a and LFUT81-3a), Texas Eastern Transmission Corp.

CAG-3. Docket No. RP81-109-001, Texas Eastern Transmission Corp.

CAG-4. Docket No. RP80-97, Tennessee Gas Pipeline Co.; Docket No. RP80-100, Michigan Wisconsin Pipe Line Co.; Docket No. RP80-102, Southern Natural Gas Co.; Docket No. RP80-107, Natural Gas Pipe Line Co. of America; Docket No. RP80-117, Transcontinental Gas Pipe Line Corp.; Docket No. RP80-121, United Gas Pipe Line Co.; Docket No. RP80-106, Trunkline Gas Co.; Docket No. RP80-145, Columbia Gulf Transmission Co.; Docket No. RP80-145, Columbia Gas Transmission Corp.; Docket Nos. RP80-55 and RP80-118, Sea Robin Pipeline Co.; Docket No. RP81-7, Florida Gas Transmission Co.; Docket No. RP81-18, High Island Offshore System; Docket No. RP81-20, U-T Offshore System

CAG-5. Docket No. CI81-428-000, Pan Eastern Exploration Co.; Docket No. CI81-409-000, Zapata Exploration Co.; Docket No. CI81-220-001, Koch Industries Inc.; Docket No. CI81-407-000 Aminoil USA, Inc.; Docket No. CI81-427-000, Amerada Hess Corp.

CAG-6. Docket No. CP81-194-000, Sea Robin Pipeline Co.

CAG-7. Docket No. CP81-217-000, Transcontinental Gas Pipe Line Corp. and United Gas Pipe Line Co.

CAG-8. Docket Nos. CP81-170-000, CP81-193-000 and CP81-203-000, Cities Service Gas Co.

CAG-9. Docket Nos. CP81-219-000 and CP81-219-001, East Tennessee Natural Gas Co.; Docket No. CP81-337-000, Texas Eastern Transmission Corp.

CAG-10. Docket No. G-1440-001, Louisiana Nevada Transit Co.; Docket No. CP81-352-000, Arkansas Louisiana Gas Co.

CAG-11. Docket No. CP81-254-000, Northern Natural Gas Co., Division of Internorth, Inc.

CAG-12. Docket No. CP81-272-000, Transcontinental Gas Pipe Line Corp.

CAG-13. Docket No. CP81-210-000, Texas Gas Transmission Corp.; Docket No. CP81-332, Louisiana Resources Co.; Docket No. CP81-333, Louisiana Intrastate Gas Corp.

CAG-14. Docket No. CP81-290-000, Southern Natural Gas Co.

CAG-15. Docket No. CP81-35-000, Montana-Dakota Utilities Co.

CAG-16. Docket No. CP75-221, El Paso Alaska Co.; Docket No. RM79-63, Fees applicable to natural gas pipelines

CAG-17. Docket No. ST80-115-001, Arkansas Oklahoma Gas Corp.; Docket No. ST80-64-001, Phillips Petroleum Co.; Docket No. ST80-83-001, Transwestern Pipeline Co.

CAG-18. Docket No. ST81-396-000, East Texas Industrial Gas Co.

CAG-19. Docket Nos. CP80-144-000, CP80-144-001 and CP80-144-002, Mountain Fuel Resources, Inc. and Mountain Fuel Supply Co.

Regular Power Agenda

I. Licensed Project Matters

P-1. Reserved

II. Electric Rate Matters

ER-1. Docket No. ER81-653-000, Northern States Power Co. (Wisconsin)

ER-2. Docket No. ER81-679-000, Pacific Gas & Electric Co.

ER-3. Docket No. ER79-126, Arizona Public Service Co.

ER-4. Docket No. ER78-522, Virginia Electric & Power Co.

ER-5. Docket Nos. ER77-485 and ER77-551, Carolina Power & Light Co.; Docket No. E-9606, North Carolina Electric Membership Corp., Four County Electric Membership Corp., Electricities of North Carolina, and Cities of Bennettsville and Camden, South Carolina

ER-6. Docket Nos. E-9520 and ER77-531, Illinois Power Co.

Regular Miscellaneous Agenda

M-1. Docket No. RM81-18, revision of Part 34—Application for authorization of the issuance of securities or the assumption of liabilities

M-2. Reserved

M-3. Reserved

M-4. Docket No. RM81-?, Regulations implementing equal access to Justice Act
M-5. Docket No. RM81-28, incremental pricing: Elimination of 31 metropolitan regions

Regular Gas Agenda

I. Pipeline Rate Matters

RP-1. Docket No. RP80-102, Southern Natural Gas Co.
RP-2. Docket No. TA81-2-9-000 (PGA81-2, et al.), Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

II. Producer Matters

CI-1. Docket No. CI84-26 (force majeure), Gulf Oil Corp.
CI-2. Docket No. G-3636, Allied Chemical Corp.

III. Pipeline Certificate Matters

CP-1. Docket No. RP76-91, Montana-Dakota Utilities Co.

Kenneth F. Plumb,

Secretary.

[S-1464-81 Filed 9-25-81; 10:32 am]

BILLING CODE 6450-85-M

7

FEDERAL HOME LOAN BANK BOARD:

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 47349, Friday, September 25, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Wednesday, September 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).

CHANGES IN THE MEETING: The following item has been added to the open portion of the bank board meeting scheduled Wednesday, September 30, 1981:

Treatment of Gains and Losses for the Sale of Mortgage Assets

No. 543, September 25, 1981.

[S-1470-81 Filed 9-25-81; 2:45 pm]

BILLING CODE 6720-01-M

8

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 47349, Friday, September 25, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Wednesday, September 30, 1981.

PLACE: 1700 G Street NW., board room, sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6679).

CHANGES IN THE MEETING: The following item has been added to the open portion of the Bank Board meeting scheduled for Wednesday, September 30, 1981:

Proposed Merger; Maintenance of Branch Office; Cancellation of Membership and Insurance and Transfer of Stock—First Savings Association of Dowagiac, Dowagiac, Michigan *into* Standard Federal Savings and Loan Association, Troy, Michigan.

No. 542, September 25, 1981.

[S-1467-81 Filed 9-25-81; 11:30 am]

BILLING CODE 6720-01-M

9

FEDERAL RESERVE SYSTEM.

(Board of Governors)

TIME AND DATE: 10 a.m., Friday, October 2, 1981.

PLACE: Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: *Summary Agenda:* Becasue of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Request by Citicorp, New York, New York, relating to the repatriation of foreign borrowings.
2. Proposal to simplify procedures for State member banks to establish domestic branches.

Discussion Agenda:

3. Proposed determination whether real estate brokers assisting in seller financing are exempt from Regulation Z (Truth in Lending).
4. Proposal to amend Regulation Y (Bank Holding Companies and Change in Bank Control) to permit bank holding companies to sell renewal insurance.
5. Proposal to amend Regulation T (Credit by Brokers and Dealers) to establish margin requirements for options on exempt debt securities. (Proposed earlier for public comment; Docket No. R-0082)
6. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassettee by calling (202) 452-3684 or by writting to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: September 25, 1981.

James McAfee,

Assistant Secretary of the Board.

[S-1469-81 Filed 9-25-81; 12:29 pm]

BILLING CODE 6210-01-M

10

FEDERAL RESERVE SYSTEM: Board of Governors.

TIME AND DATE: 10 a.m., Monday, October 5, 1981.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

James McAfee,

Assistant Secretary of the Board.

Dated: September 25, 1981.

[S-1475-81 Filed 9-25-81; 3:50 pm]

BILLING CODE 6210-01-M

11

INTERNATIONAL TRADE COMMISSION:

[USITC SE-81-29]

TIME AND DATE: 10 a.m., Wednesday, October 7, 1981.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:
a. Press lines (Docket No. 751).
5. Consideration of the FY '83 budget.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1465-81 Filed 9-25-81; 10:33 am]

BILLING CODE 7020-02-M

12

NATIONAL TRANSPORTATION SAFETY BOARD.

[NM-81-36]

TIME AND DATE: 9 a.m., Thursday, October 8, 1981.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue, S.W.,

Washington, D.C. 20594.

STATUS: The first item will be open to the public; the second will be closed under exemption 9B of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. OMB-Directed Study of Field Investigation Practices.
2. *Recommendation* to Bureau Enquetes Accident Inspection Generale de l'Aviation Civile regarding Air France Concorde Blown-Tire Incidents, Dulles International Airport and JFK International Airport, June 1979 through February 1981.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming 202–382–6525.

September 25, 1981.

[S-1468-81 Filed 9-25-81; 11:31 am]

BILLING CODE 4910-58-M

13

NUCLEAR REGULATORY COMMISSION.

DATE: Week of September 28, 1981 (revised), and week of October 5, 1981.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED:

Wednesday, September 30

10:00 a.m.

1. Briefing on Status and Prioritization of NUREG–0737/–0660 Developmental Items (public meeting) (as announced)

Thursday, October 1

10 a.m.

1. Discussion and Possible Vote on Revised Licensing Procedures—Proposed Rule Change to Part 2 (open/closed meeting) (as announced)

3 p.m.

1. Affirmation/Discussion Session (public meeting)

Items to be affirmed and/or discussed:

a. Financial Protection for TMI Units 1 and 2 (postponed from September 24, 1981)
b. Use of Administrative Law Judges as Presiding Officers in Antitrust Proceedings
c. Selection of Hearing Panel for Part 30 Proceeding
d. Review of ALAB–646, In the Matter of Alabama Power Co. (Antitrust) and Alabama Power Company's Application for a Stay *Pendente Lite*
e. Central Electric Power Cooperative's Petition for Reconsideration (Virgil Summer OL—Antitrust)
f. TMI–1 Restart—Management Competence Decision
g. Diablo Canyon Physical Security—Governor Brown's Motion for Additional Counsel and Secretary

Wednesday, October 7

10 a.m.

1. Briefing on Status of NUREG–0771 and –0772 (on Fission Product Behavior) (public meeting)

Thursday, October 8

10 a.m.

1. Discussion of TMI–1 Restart (closed meeting)

3 p.m.

1. Affirmation/Discussion Session (public meeting)

Items to be affirmed and/or discussed:

a. Interim Rule on Hydrogen Control (postponed from September 24)
b. Petition for Extension of Deadline for Environmental Qualification of Class IE Electrical Equipment (postponed from September 24)

ADDITIONAL INFORMATION:

On September 21, 1981, Discussions of Low-Power Operating License for Diablo Canyon (closed sessions), were held, continued from 9/18/81.

Discussion of Congressional Testimony, previously scheduled for September 30, has been cancelled.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–1410.

Walter Magee,

Office of the Secretary.

September 24, 1981.

[S-1476-81 Filed 9-25-81; 4:09 pm]

BILLING CODE 7590-01-M

federal register

Tuesday
September 29, 1981

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Prime Farmland Grandfather Rules; Amendments

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 716 and 785

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Prime Farmland Grandfather Rules

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Amendments to final rule.

SUMMARY: OSM is revising the Prime Farmland Grandfather Rules as published on January 23, 1981, 46 FR 7894, the effective dates of which were postponed in **Federal Register** notices of February 4, 1981 (46 FR 10707), March 23, 1981 (46 FR 18023), April 3, 1981 (46 FR 20211), April 29, 1981 (46 FR 23924) June 15, 1981 (46 FR 31258), and August 14, 1981 (46 FR 41046), and the revisions include removing the cut-off date of the exemption. This action is being taken after OSM solicited and received voluminous comments from the public on whether the rules should become effective, modified, or suspended indefinitely. Accordingly, the rules which take effect today exempt certain permits and revisions or renewals of those permits from both the special prime farmland permits application and performance standards of the Surface Mining Control and Reclamation Act.

EFFECTIVE DATES: The amendments to §§ 716.7 and 785.17 are effective on September 29, 1981.

FOR FURTHER INFORMATION CONTACT: LeRoy deMoulin, Soil Scientist, Office of Surface Mining, Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Phone (202) 343-5954.

SUPPLEMENTARY INFORMATION:

Background

The statutory basis, legislative history and rulemaking history of the prime farmland grandfather rules appeared in the Notice of Proposed Rules (45 FR 25992-95, April 16, 1980) and Notice of Final Rules (46 FR 7894-7900, January 23, 1981). That material will not be repeated here, but is incorporated and made a part hereof unless otherwise stated in this notice.

Related Litigation

Several parties filed lawsuits after publication of the rules on January 23, 1981. These cases are in the early stages of litigation and are entitled: *National Coal Association and American Mining Congess* v. *Watt, et al.*, Civ. No. 81-0693 (D.D.C.); *Peabody Coal Company* v. *Watt, et al.*, Civ. No. 81-0645 (D.D.C.); *Illinois Department of Mines and Minerals* v. *U.S. Department of the Interior, et al.*, Civ. No. 81-0708 (D.D.C.).

Analysis of Comments

The final regulations published on January 23, 1981, exempted all lands included in pre-August 3, 1977, permits and all revisions or renewals of those permits. Continuations of pre-existing surface coal mining operations would be exempt where the lands are: (1) an extension of a continuous mining pit or pits; (2) part of a single permitted operation; and (3) part of a continuous recoverable coal seam. The regulations also required that the permittee demonstrate that he or she had a pre-August 3, 1977, legal right to mine the exempted lands, and established a cut-off date of August 3, 1982. Numerous public comments were received on the issues of whether to modify, issue or suspend the rules indefinitely pending the outcome of further rulemaking. These comments are summarized and responded to in the following paragraphs.

General Comments

Several commenters expressed strong objection to the January 23, 1981, grandfather rule, stating that the rule will interfere with primacy and that the objectives of the Surface Mining Act will be better served by an indefinite postponement or extension of the January 23, 1981 rule followed by full notice and comment in a new rulemaking. Most of these commenters attached copies of their comments submitted at earlier stages of OSM's permanent program rulemaking on prime farmland and requested that those comments be reconsidered by OSM. Some commenters stated their belief that OSM had not seriously considered the prior comments in developing the grandfather rules. Other commenters merely expressed strong objection without specifying any details.

Several commenters also expressed strong objection to further postponement of the rule stating that there are no compelling reasons for delaying the protection afforded prime farmland under the January 23, 1981 regulations. These commenters stated that the productivity of thousands of acres of prime farmland will be in jeopardy because no prior rules remain in effect; that allowing the January 23, 1981 regulation to take effect would not interfere with primacy; and that regulations on this subject are needed because Section 510 of the Surface Mining Act is sufficiently vague to require clarification. Some commenters stated that they believed that OSM's justification for requesting notice and comment amounted to a prejudgment because the agency had already decided to suspend the January 23, 1981 rule and have a new rulemaking on prime farmland grandfather issues. Among those commenters who opposed further delay in implementing the January 23, 1981 regulations were several Members of Congress and the Secretary of the Department of Agriculture.

OSM rejects the assertion that it has prejudged this issue by assuming that the January 23, 1981 regulations would be suspended after a perfunctory notice and comment period. This may have been the impression left by the March 23, 1981 **Federal Register**, "Notice of Suspension of Certain Rules in 30 CFR Chapter VII." (46 FR 17191-92.) As noted in the later **Federal Register** notice, the March 23, 1981 notice was published in error and was cancelled and superseded by the April 3, 1981 notice. 46 FR 20211, April 3, 1981. OSM has carefully considered all public comments received, including those comments filed in previous rulemakings which were incorporated in the public's comments filed in this rulemaking. The comments received on the issues of "pre-existing permits," "renewals and revisions of pre-existing permits," "existing surface coal mining operations" and definitions of "continuous mining pit" and "continuous surface coal mining operation" are discussed in the January 23, 1981 **Federal Register** notice (46 FR 7898-99) and that discussion is adopted here and incorporated by and made a part hereof. As stated in the January 23, 1981 notice announcing the final rule, the Secretary interprets the June 30, 1980 decision of the Court of Appeals to authorize him to place a reasonable limit on the extent of grandfathering in order to carry out the "purposes and provisions" of the Surface Mining Act. See 46 FR 7895 (January 23, 1981) and *In Re: Surface Mining Regulation Litigation*, No. 78-2191, 78-2192, Slip Op. (D.C. Cir., June 30, 1980).

OSM is cognizant of the claims of the State of Illinois that the portions of the rules made effective today "fail(ed) to exempt or otherwise give account to the distinct differences between surface and underground coal mining, to the application of this rule to surface structures and facilities, and to the physical characteristics of certain continuous and ongoing surface coal mining operations in Illinois," *Illinois Department of Mines and Minerals* v. *United States Department of the Interior*, No. 81-0708, D.D.C. Petition for

Judicial Review, p. 3, filed March 24, 1981. OSM has worked closely with the State of Illinois in developing these regulations (see discussion at 45 FR 25994–95, April 16, 1980). OSM will continue to work closely with Illinois and all states in the context of state programs submissions and amendments in accommodating the physical characteristics of mining in each state. However, OSM makes this rule effective today in the belief that it is necessary to establish a general regulatory structure which responds to Congressional concern that the grandfather clause give some flexibility to existing operations and which clarifies a section of the Surface Mining Act which is accompanied by conflicting legislative history.

Exemption Termination Date

OSM has also carefully considered all comments received on the August 3, 1982 exemption cut-off date. See 30 CFR 716.7(a)(2)(vi) and 785.17(a)(6) of the final regulations published on January 23, 1981. OSM promulgated regulations containing the 1982 exemption termination date based in part on the experience of the State of Illinois. See discussion in proposed rule (45 FR 25994–95, April 16, 1980) and final rule (46 FR 7895–96, January 23, 1981). Two comments were received from the State of Illinois (the Department of Mines and Minerals and the Department of Agriculture) supporting the use of the 1982 termination date. Other general comments in support of and in opposition to the 1982 date were also received. At this time, OSM believes that an orderly transition period between pre-Act and post-Act prime farmland standards may be necessary to reduce wide variations in application of the law and to provide certainty to the public, states and operators on the scope of Section 510(d) of the Act. The public comments received by OSM in past rulemakings and in this rulemaking demonstrate that considerable controversy surrounds the concept of uniform termination date. In order to provide maximum public participation and to enable OSM and commenters to gather additional information on potential solutions to this issue, OSM announces here its intention to engage in further rulemaking on this issue. Meanwhile, the 1982 termination date which appeared in the January 23, 1981 rules will not be made effective and will be deleted. Persons desiring to submit written comments for consideration in proposing a new rule on termination of grandfathering should send those comments to the individual listed under the heading **"For Further Information Contact:"** OSM is, of course, willing to work with individual States desiring to include a more stringent provision (i.e., a termination date) in their programs.

The Office does not agree that the action taken today will interfere with state primacy or destroy thousands of acres of prime farmland. As noted in the January 23, 1981, **Federal Register** notice (46 FR 7897), there is an orderly procedure and opportunity for states to amend their programs to take this rule into account. In addition, the interim program rule at 30 CFR 716.7(a)(2) will become effective today in States without primacy and in States with primacy for those operations not yet permitted under permanent programs. In addition, and as noted in some public comments, eligibility for grandfathering does not automatically result in inadequate reclamation of the land. Such operations remain subject to the regular non-prime farmland performance standards of the Surface Mining Act, including topsoil protection, revegetation, postmining land use and bonding.

Editorial Correction

The following line appearing in 30 CFR 716.7(a)(2)(ii) on January 23, 1981, was inadvertently omitted from 30 CFR 785.17(a)(2)—(decision by the regulatory authority to allow) *changes in method of mining operations within the original permit area, or the decision of the regulatory authority to allow* (incidental boundary changes * * *). This correction makes the interim and permanent program regulations identical and is not considered a substantive change.

Statements Under E.O. 12291 and NEPA

OSM has determined that making this rule effective is not a major rule under Executive Order 12291 and a regulatory impact analysis will not be prepared.

OSM has determined that making this rule effective is not a major federal action significantly affecting the quality of the human environment based upon a finding of no significant impact (FONSI). The FONSI and environmental assessment are available to the public at OSM's Administrative Record, 1951 Constitution Avenue, N.W., Room 151, South Interior Building, Washington, D.C. 20240. Accordingly, an environmental impact statement will not be prepared.

Regulatory Flexibility Act

Pub. L. 96–354 requires that the head of an agency must make a certification of effect on small entities and publish the certification and reasons therefor in the appropriate **Federal Register** document. Following is the required certification.

I certify that making this rule effective will not have a significant economic impact on a substantial number of small entities. Potentially there are two groups who may be affected by the revised rules. They are small scale coal operators and small scale farmers who mine coal and grow their crops on prime farmlands. The numbers of small operators in the states most affected by mining are as follows: Kentucky 700, Indiana 30, and Illinois 20. However, the percentage of these operators mining on prime farmlands with a pre-August 3, 1977 permit is not available. This number is assumed to be small since the total acreage of prime farmland affected annually is relatively small. These same assumptions also are true for the number of farmers. In 1977 the annual affected prime farmland acreage was 21,800.

In forming these conclusions, it should be remembered that not all prime farmland is in crops and that even with a grandfather exemption the land must be returned to a "* * * condition capable of supporting the uses it was capable of supporting prior to any mining * * *". Overall, no national effect on small entities is expected and any localized regional impact would be minimal. The possible adverse effects would include the cost to the coal companies of meeting more stringent reclamation standards on prime farmlands and of these costs being passed directly on the coal consumer.

Dated: September 22, 1981.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

Final Regulations

The following regulations in Chapter VII of Title 30 of the Code of Federal Regulations are amended as follows:

PART 716—SPECIAL PERFORMANCE STANDARDS

A. 30 CFR 716.7 (a)(2) and (a)(3) are added to read:

§ 716.7 Prime farmland.

(a) * * *

(2) Except as otherwise provided in this paragraph, the requirements of the section are applicable to any lands covered by a permit application filed on or after August 3, 1977. This section does not apply to:

(i) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or

(ii) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

(iii) Lands included in any existing surface coal mining operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

(A) Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

(B) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease, or contract; and

(C) The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

(3) For purposes of this section:

(i) "renewal" of a permit shall mean a decision by the regulatory authority to extend the time by which the permittee may complete mining within the boundaries of the original permit, and "revision" of the permit shall mean a decision by the regulatory authority to allow changes in the method of mining operations within the original permit area, or the decision of the regulatory authority to allow incidental boundary changes to the original permit;

(ii) a pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing;

(iii) a single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include non-contiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the contiguous parcels were part of a single permitted operation. For the purposes of this paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one surface coal mining operation.

* * * * *

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

B. 30 CFR 785.17(a) is revised to read:

§ 785.17 Prime farmland.

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands historically used for cropland. This section does not apply to:

(1) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or

(2) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

(3) Lands included in any existing surface coal mining operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

(i) Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

(ii) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease, or contract; and

(iii) The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

(4) For purposes of this section:

(i) "Renewal" of a permit shall mean a decision by the regulatory authority to extend the time by which the permittee may complete mining within the boundaries of the original permit, and "revision" of the permit shall mean a decision by the regulatory authority to allow changes in the method of mining operations within the original permit area, or the decision of the regulatory authority to allow incidental boundary changes to the original permit;

(ii) A pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing;

(iii) A single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include non-contiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the non-contiguous parcels were part of a single permitted operation. For the purposes of this paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one surface coal mining operation.

(Secs. 201, 501, 527 and 529, Pub. L. 95–87 Stat. 445 (30 U.S.C. 1201))

[FR Doc. 81-28071 Filed 9-28-81; 8:45 am]
BILLING CODE 4310-05-M

federal register

Tuesday
September 29, 1981

Part III

Equal Employment Opportunity Commission

Age Discrimination in Employment; Interpretations

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

Final Interpretations: Age Discrimination in Employment Act

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final Interpretations; Rescission of Interpretations.

SUMMARY: On July 1, 1979, pursuant to Reorganization Plan No. 1 of 1978, 43 FR 19807 (May 9, 1978) responsibility and authority for enforcement of the Age Discrimination in Employment Act of 1967, (ADEA) as amended, 29 U.S.C. 621, 623, 625, and 626–634 was transferred from the Department of Labor to the Equal Employment Opportunity Commission. The Commission assumed enforcement of the ADEA on that date.

On June 29, 1979, just prior to assuming jurisdiction over the ADEA, the Commission published a notice in the **Federal Register** which indicated that the Commission had undertaken a complete review of all interpretations issued by the Department of Labor under the ADEA (29 CFR Part 860). *See* 44 FR 37974 (June 29, 1979). That notice also indicated that until changed, the existing interpretations of the Department of Labor would remain in effect and could be relied upon as provided by section 7(e)(1) of the ADEA, 29 U.S.C. 626(e)(1).

After assuming jurisdiction over the ADEA, the Commission published its own proposed interpretations of the ADEA in the **Federal Register** with an invitation for public comment. *See* 44 FR 68858 (November 30, 1979). After receipt and careful review of those comments, the Commission herein publishes in final form its interpretations of the ADEA. This document sets forth various interpretations which indicate the construction of the ADEA that the Commission believes to be correct and which will guide it in the performance of its administrative and enforcement duties under the Act. Publication of these final interpretations is intended to effectively rescind the existing interpretations of the Department of Labor (29 CFR Part 860) which, until now, retained their vitality by virtue of the June 29, 1979, **Federal Register** notice by the Commission. *See* 44 FR 37974. Those interpretations may no longer be relied upon as provided by section 7(e)(1) of the ADEA.

EFFECTIVE DATE: Since the following final agency interpretations are interpretative rules or statements of policy, the 30-day delay in effective date as prescribed in section 553(d) of Title 5 U.S. Code does not apply. Accordingly, these interpretations are effective upon September 29, 1981.

FOR FURTHER INFORMATION CONTACT: John Pagano, Office of the General Counsel, Legal Counsel Division, Equal Employment Opportunity Commission, 2401 E Street, NW, Room 2254, Washington, D.C. 20506, telephone (202) 634–6595.

SUPPLEMENTARY INFORMATION: On November 30, 1979, the Equal Employment Opportunity Commission published its proposal to add Part 1625 to Title 29 of the Code of Federal Regulations. See 44 FR 68858. That proposal contained interpretations of various portions of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621–634.

After reviewing the public comments received on those proposed interpretations, the EEOC has reconsidered the positions taken therein and has determined that certain modifications are necessary.

§ 1625.1 Definitions.

This section refers to various terms whose meanings are set forth in Section 11 of the ADEA, 29 U.S.C. 630. Insofar as no comments were received on this section, its final version is published without modification.

§ 1625.2 Discrimination between individuals protected by the act.

Comments received on this section focused on the ambiguity of paragraph (b) of this section regarding the extension of additional benefits to older employees within the protected age group. Several comments also raised questions regarding the legal basis for discrimination between members of the protected group.

The proposed interpretation was never intended to sanction discrimination between individuals entitled to the protections of the act. Rather, the section was intended to permit an employer to extend additional benefits to older members of the protected group in recognition of problems peculiar to those older individuals. The Commission intends that the final interpretation contained in paragraph (b) of this section provide for a continuation of the flexible approach first announced in administrative Opinion Letters of the Department of Labor. Opinion Letter 404 of the Wage-Hour Administrator of the Department of Labor (August 26, 1976) advises that it is permissible to insert contract language which would require that a certain number of positions be made available to an older segment of the protected age group. Similarly, Opinion Letter 451 of the Wage-Hour Administrator (January 31, 1978) permits varying amounts of severance pay based, in part, on an employee's age.[1] The basis for both opinion letters was that an employer can take measures to counteract discrimination which is more prevalent against older members of the protected group. The former letter, 404, recognized that an older employee (55 and over) may be a more frequent target of age discrimination, and the latter opinion, 451, recognized that same principle in the context of job relocation. In both instances, the opinions were based on tacit recognition of the fact that age discrimination is frequently more prevalent and more severe against older workers in the protected age group. The final subsection (b) has been reworded to make this principle clear.

§ 1625.3 Employment Agency.

No comments were received on this section. It remains unchanged in its final version.

§ 1625.4 Help wanted notices or advertisements.

The comments received on this section suggested that paragraph (a) of this section be reworded to indicate that the use of terms such as "young" or "college student" does not, *per se*, constitute a violation of the act. In accordance with those suggestions, the Commission has inserted qualifying language in the final interpretation.

§ 1625.5 Employment applications.

The comments received on this section focused on two major areas of concern. First, several commentors suggested that the wording regarding employment "inquiries" was so ambiguous that it provided little or no guidance on what actually constituted an "inquiry." Moreover, several comments suggested that in drafting the employment application section, the Commission had broadened the definition of employment applications by including a reference to "all inquiries about employment," a definition arguably inconsistent with the wording contained in the Commission's recordkeeping regulations, 29 CFR 1627.3(b)(1)(i). In addition, commentors suggested that an ambiguity was created as to whether that definition was intended to cover verbal inquiries as well. In response to these suggestions, the section has been clarified to indicate that "employment applications" refers

[1] Reference to these Opinion letters is in no way intended to validate them in their entirety as interpretations of the Commission. In particular, we wish to note that the final substantive paragraph of Opinion Letter 451 is no longer an accurate statement of the law.

to all written inquiries about employment, including resumes, but does not encompass verbal inquiries made either by applicants or current employees.

Second, the section has been reworded to clarify the fact that when an employer uses questions relating to the age of an applicant, that the purpose is not one proscribed by the statute should be made known to the applicant. However, that fact does not necessarily have to be communicated on the application itself. While the Commission believes that the proposed section already made this fact clear, the section has been reworded to avoid any residual ambiguity.

§ 1625.6 Bona fide occupational qualifications.

In general, the comments received on this section questioned the deletion of certain examples from the previous Department of Labor interpretation and the general brevity of the section itself. The examples contained in the previous interpretation were deleted to avoid the appearance that those examples had received the imprimatur of the Commission. Most notable in this regard is the controversial age-60 rule of the FAA.

In response to suggestions that the proposed interpretation provided insufficient guidance, the Commission has expanded the section to incorporate language expressing the Commission's view on the criteria which must be met for the establishment of a valid BFOQ under the Act. The section now makes it clear that anyone asserting a BFOQ defense has the burden of proving that (1) the age limit is reasonably necessary to the essence of the business, and *either* (2) that all or substantially all individuals excluded are in fact disqualified, or (3) that some of the individuals so excluded possess a disqualifying trait that cannot be ascertained except by reference to age. The final interpretation makes clear that when age is asserted as a BFOQ for reasons of public safety, those asserting the defense will be held to the same standard as that which is applied when sex is asserted as a BFOQ for public safety. That standard is one of business necessity. *See Diaz* v. *Pan American Airlines*, 442 F.2d 385, 388 (5th Cir.) (BFOQ means business necessity), *cert. denied*, 404 U.S. 950 (1971).

Finally, in spite of the prohibition on involuntary retirement that was added by the 1978 amendments to Section 4(f)(2), many state, local and municipal governments continue to involuntarily retire employees at arbitrary ages. The section now indicates that if the laws or regulations under which those individuals are involuntarily retired do not meet the BFOQ standards of the interpretation, they will be considered in conflict with and effectively superseded by the ADEA.

§ 1625.7 Differentiations based on reasonable factors other than age.

The Commission received numerous comments on this section and has decided to modify paragraphs (c), (d), and (e) of this section to clarify its position regarding the section 4(f)(1) exception of a reasonable factor other than age.

Paragraph (c) has been rewritten to illustrate that where an employment practice uses age as a limiting criterion, the defense that the practice is justified by the section 4(f)(1) exception of a reasonable factor other than age is unavailable. *See Marshall* v. *Goodyear Tire & Rubber Co.*, 19 EPD ¶8973 (W.D. Tenn. 1979). Considerable confusion was generated on the proposed section from the apparent misunderstanding that, as originally written, it applied to the employer's burden of rebutting the *prima facie* case. That was incorrect. The section refers to the use of the Section 4(f)(1) defense of "a reasonable factor other than age," and has been clarified to indicate when that defense is unavailable. c.f. *City of Los Angeles, Department of Water and Power, et al.* v. *Manhart*, 435 U.S. 702, 712–13 (1978).

Paragraph (d) of § 1625.7 has been rewritten to make it clear that employment criteria that are age-neutral on their face but which nevertheless have a disparate impact on members of the protected age group must be justified as a business necessity. *See Laugesen* v. *Anaconda Corp.*, 510 F.2d 307 (6th Cir. 1975); *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971). The final interpretation also contains a reference to the Commission's Guidelines on Employee Selection Procedures, 29 CFR Part 1607.

Paragraph (e) of § 1625.7 has been modified to clarify its initial intent that when the defense of "a reasonable factor other than age" is raised against an individual claim of discriminatory treatment, the employer bears the burden of showing that the "reasonable factor other than age" exists factually. *Loeb* v. *Textron, Inc.*, 600 F.2d 1003 (1st Cir. 1979).

§ 1625.8 Bona fide seniority systems.

Comments received on bona fide seniority systems, in general, focused on one issue. That issue, embodied in section (a) of the proposal, is whether length of service must be the primary criteria for the equitable allocation of available employment opportunities. One commentor suggested that the agency await the decision of the Supreme Court in *California Brewers Ass'n* v. *Bryant*, 100 S. Ct. 814 (1980), insofar as that case was to consider the issue of length of service in a seniority system. *Bryant* has been decided and supports the agency's proposed interpretation that the principle feature of any and every seniority system is that preferential treatment is dispensed on the basis of some measure of time served in employment. For these reasons, the proposed interpretation remains unchanged.

Subsection (d) has been reworded to indicate that the "bona fides" of a purported seniority system which violates Title VII of the Civil Rights Act of 1964 will be closely scrutinized to ensure that such a system is, in fact, bona fide under the ADEA.

§ 1625.9 Involuntary retirement.

Most of the comments received on this section concerned the application of the amendment to cases pending on the date of enactment of the amendment or cases filed thereafter which challenge involuntary retirements which occurred before the amendment. Invariably the comments suggested that the Commission was misinterpreting *Bradley* v. *Richmond School Board*, 416 U.S. 696 (1974). After reexamination of that Supreme Court decision, the Commission disagrees with those comments and leaves the existing § 1625.9(b)(2) unchanged. In *Bradley*, the Supreme Court stated that:

> * * * a court is to apply the law in effect at the time it renders its decision, *unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary.* 416 U.S. at 711. (Emphasis added).

In accordance with the decision in *Bradley*, the Commission believes that courts should apply the amendment prohibiting involuntary retirement unless, as determined on a case-by-case basis, the respondent can show that the application of the amendment would result in "manifest injustice." The Commission disagrees with the suggestion of several comments that *any* application of the amendment to pending cases would be unjust *as a matter of law*. Moreover, the Commission disagrees with several comments which suggested that the legislative history indicates an intent not to have the amendments applied retroactively. The Commission believes that those comments reflect a misinterpretation of the following quoted dialogue between Senators Randolph and Williams:

* * * Mr. Randolph. I should like to ask the Senator from New Jersey (Mr. Williams) whether this retroactivity covers a forced retirement at, say, age 60 or 62 prior to the effective date of this bill where the individual so retired is eligible for, and actually receives, a pension under a pension plan which has been qualified with the Internal Revenue Service?

Mr. Williams. *The bill is not retroactive. The question of mandatory retirements prior to the effective date of this bill will be determined by the courts' interpretation of existing law.* 123 Cong. Rec. S17304 (daily ed. Oct. 19, 1977) (emphasis added). * * *

Contrary to what several commentors have suggested, the Commission does not interpret Senator Williams' comments as a declaration of the *intent* of the bill. Rather, he indicated that the bill did not declare itself to be retroactive, *by its terms.* He clearly indicated that its application was to be resolved by the Courts. For this reason, paragraph (b)(2) of this section remains unchanged.

§ 1625.13 Apprenticeship programs.

This interpretation was not originally included with the proposed interpretations published for notice and comment on November 30, 1979. Rather, by way of **Federal Register** notice of September 29, 1980, 45 FR 64212, the Commission published for notice and comment a proposed rule which would have rescinded this interpretation and replaced it with a substantive rule. In response to that notice of proposed rulemaking, the Commission has received and carefully reviewed almost three hundred public comments on the apprenticeship issue. As a result of that review, the Commission has been persuaded to republish the existing interpretation without modification.

Publication of these final interpretations is intended to rescind the existing interpretations of the Department of Labor set forth at 29 CFR Part 860. The Commission wishes to note that these interpretations are to be accompanied by the final interpretations published by the Commission on November 21, 1979, entitled "Exemption for employees serving under a contract of unlimited tenure," § 1625.11, and "Exemption for bona fide executive or high policymaking employees," § 1625.12. *See* 44 FR 66799 (November 21, 1979). The Commission also wishes to note that § 1625.10 remains reserved for "Costs and benefits under employee benefit plans." These final interpretations are not intended to rescind the Department of Labor's Interpretative Bulletin on Employee Benefit Plans, 29 CFR 860.120, which was published on May 25, 1979, 44 FR 30648. That interpretative bulletin will remain in effect in accordance with the Commission's **Federal Register** notice of June 29, 1979. *See* 44 FR 37974. Upon completion of its substantive review of that interpretation, the Commission will publish any proposed modifications to that document for notice and comment in the **Federal Register.** The existing interpretation, along with any modifications made by the Commission, will eventually be set forth at 29 CFR 1625.10.

The Commission has submitted this document to the Office of Management and Budget in accordance with the requirements of Executive Order 12291.

Signed at Washington, D.C., this 18th day of September 1981.

For the Commission.

J. Clay Smith, Jr.,

Acting Chair, Equal Employment Opportunity Commission.

PART 1625—INTERPRETATIONS; AGE DISCRIMINATION IN EMPLOYMENT ACT

29 CFR Part 1625 is amended as follows:

1. In Part 1625, the table of contents is amended by adding the following sections:

Sec.
1625.1 Definitions.
1625.2 Discrimination between individuals protected by the Act.
1625.3 Employment agency.
1625.4 Help wanted notices or advertisements.
1625.5 Employment applications.
1625.6 Bona fide occupational qualifications.
1625.7 Differentiations based on reasonable factors other than age.
1625.8 Bona fide seniority systems.
1625.9 Prohibition of involuntary retirement.
1625.10 Costs and benefits under employee benefit plans.
* * * * *
1625.13 Apprenticeship programs.

2. The authority citation for Part 1625 is revised to read as follows:

Authority: 81 Stat. 602; 29 U.S.C. 621, 5 U.S.C. 301, Secretary's Order No. 10–68; Secretary's Order No. 11–68, and sec. 2; Reorg. Plan No. 1 of 1978, 43 FR 19807.

3. Sections 1625.1 through 1625.10 and 1625.13 are added to read as follows:

§ 1625.1 Definitions.

The Equal Employment Opportunity Commission is hereinafter referred to as the "Commission". The terms "person", "employer", "employment agency", "labor organization", and "employee" shall have the meanings set forth in Section 11 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.*, hereinafter referred to as the "Act". References to "employers" in this part state principles that are applicable not only to employers but also to labor organizations and to employment agencies.

§ 1625.2 Discrimination between individuals protected by the Act.

(a) It is unlawful in situations where this Act applies, for an employer to discriminate in hiring or in any other way by giving preference because of age between individuals within the 40–70 age bracket. Thus, if two people apply for the same position, and one is 42 and the other 52, the employer may not lawfully turn down either one on the basis of age, but must make such decision on the basis of some other factor.

(b) The extension of additional benefits, such as increased severance pay, to older employees within the protected age bracket may be lawful if an employer has a reasonable basis to conclude that those benefits will counteract problems related to age discrimination. The extension of those additional benefits may not be used as a means to accomplish practices otherwise prohibited by the Act.

§ 1625.3 Employment agency.

(a) As long as an employment agency regularly procures employees for at least one covered employer, it qualifies under section 11(c) of the Act as an employment agency with respect to all of its activities whether or not such activities are for employers covered by the act.

(b) The prohibitions of section 4(b) of the Act apply not only to the referral activities of a covered employment agency but also to the agency's own employment practices, regardless of the number of employees the agency may have.

§ 1625.4 Help wanted notices or advertisements.

(a) When help wanted notices or advertisements contain terms and phrases such as "age 25 to 35," "young," "college student," "recent college graduate," "boy," "girl," or others of a similar nature, such a term or phrase deters the employment of older persons and is a violation of the Act, unless one of the exceptions applies. Such phrases as "age 40 to 50," "age over 65," "retired person," or "supplement your pension" discriminate against others within the protected group and, therefore, are prohibited unless one of the exceptions applies.

(b) The use of the phrase "state age" in help wanted notices or advertisements is not, in itself, a

violation of the Act. But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate discrimination based on age, employment notices or advertisements which include the phrase "state age," or any similar term, will be closely scrutinized to assure that the request is for a lawful purpose.

§ 1625.5 Employment applications.

A request on the part of an employer for information such as "Date of Birth" or "State Age" on an employment application form is not, in itself, a violation of the Act. But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate discrimination based on age, employment application forms which request such information will be closely scrutinized to assure that the request is for a permissible purpose and not for purposes proscribed by the Act. That the purpose is not one proscribed by the statute should be made known to the applicant, either by a reference on the application form to the statutory prohibition in language to the following effect: "The Age Discrimination in Employment Act of 1967 prohibits discrimination on the basis of age with respect to individuals who are at least 40 but less than 70 years of age," or by other means. The term "employment applications," refers to all written inquiries about employment or applications for employment or promotion including, but not limited to, résumés or other summaries of the applicant's background. It relates not only to written preemployment inquiries, but to inquiries by employees concerning terms, conditions, or privileges of employment as specified in section 4 of the Act.

§ 1625.6 Bona fide occupational qualifications.

(a) Whether occupational qualifications will be deemed to be "bona fide" to a specific job and "reasonably necessary to the normal operation of the particular business," will be determined on the basis of all the pertinent facts surrounding each particular situation. It is anticipated that this concept of a bona fide occupational qualification will have limited scope and application. Further, as this is an exception to the Act it must be narrowly construed.

(b) An employer asserting a BFOQ defense has the burden of proving that (1) the age limit is reasonably necessary to the essence of the business, and either (2) that all or substantially all individuals excluded from the job involved are in fact disqualified, or (3) that some of the individuals so excluded possess a disqualifying trait that cannot be ascertained except by reference to age. If the employer's objective in asserting a BFOQ is the goal of public safety, the employer must prove that the challenged practice does indeed effectuate that goal and that there is no acceptable alternative which would better advance it or equally advance it with less discriminatory impact.

(c) Many State and local governments have enacted laws or administrative regulations which limit employment opportunities based on age. Unless these laws meet the standards for the establishment of a valid bona fide occupational qualification under section 4(f)(1) of the Act, they will be considered in conflict with and effectively superseded by the ADEA.

§ 1625.7 Differentiations based on reasonable factors other than age.

(a) Section 4(f)(1) of the Act provides that

> * * * it shall not be unlawful for an employer, employment agency, or labor organization * * * to take any action otherwise prohibited under paragraphs (a), (b), (c), or (e) of this section * * * where the differentiation is based on reasonable factors other than age * * *.

(b) No precise and unequivocal determination can be made as to the scope of the phrase "differentiation based on reasonable factors other than age." Whether such differentiations exist must be decided on the basis of all the particular facts and circumstances surrounding each individual situation.

(c) When an employment practice uses age as a limiting criterion, the defense that the practice is justified by a reasonable factor other than age is unavailable.

(d) When an employment practice, including a test, is claimed as a basis for different treatment of employees or applicants for employment on the grounds that it is a "factor other than" age, and such a practice has an adverse impact on individuals within the protected age group, it can only be justified as a business necessity. Tests which are asserted as "reasonable factors other than age" will be scrutinized in accordance with the standards set forth at Part 1607 of this Title.

(e) When the exception of "a reasonable factor other than age" is raised against an individual claim of discriminatory treatment, the employer bears the burden of showing that the "reasonable factor other than age" exists factually.

(f) A differentiation based on the average cost of employing older employees as a group is unlawful except with respect to employee benefit plans which qualify for the section 4(f)(2) exception to the Act.

§ 1625.8 Bona fide seniority systems.

Section 4(f)(2) of the Act provides that

> * * * It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of a bona fide seniority system * * * which is not a subterfuge to evade the purposes of this Act except that no such seniority system * * * shall require or permit the involuntary retirement of any individual specified by section 12(a) of this Act because of the age of such individual. * * *

(In the case of employees covered by a collective bargaining agreement which was in effect on September 1, 1977, which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act), the provisions of this section with respect to involuntary retirement of individuals between the ages of 65 and 70 were effective upon the termination of the collective bargaining agreement or January 1, 1980, whichever occurred first.) (See also § 1625.9 (d) (e), and (f).)

(a) Though a seniority system may be qualified by such factors as merit, capacity, or ability, any bona fide seniority system must be based on length of service as the primary criterion for the equitable allocation of available employment opportunities and prerogatives among younger and older workers.

(b) Adoption of a purported seniority system which gives those with longer service lesser rights, and results in discharge or less favored treatment to those within the protection of the Act, may, depending upon the circumstances, be a "subterfuge to evade the purposes" of the Act.

(c) Unless the essential terms and conditions of an alleged seniority system have been communicated to the affected employees and can be shown to be applied uniformly to all of those affected, regardless of age, it will not be considered a bona fide seniority system within the meaning of the Act.

(d) It should be noted that seniority systems which segregate, classify, or otherwise discriminate against individuals on the basis of race, color, religion, sex, or national origin, are prohibited under Title VII of the Civil Rights Act of 1964, where that Act otherwise applies. The "bona fides" of such a system will be closely scrutinized to ensure that such a system is, in fact, bona fide under the ADEA.

§ 1625.9 Prohibition of involuntary retirement.

(a)(1) As originally enacted in 1967, section 4(f)(2) of the Act provided: "It shall not be unlawful * * * to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual * * *." The Department of Labor interpreted the provision as "Authoriz[ing] involuntary retirement irrespective of age: *Provided*, That such retirement is pursuant to the terms of a retirement or pension plan meeting the requirements of section 4(f)(2)." *See* 29 CFR 860.110(a), 34 FR 9709 (June 21, 1969). The Department took the position that in order to meet the requirements of section 4(f)(2), the involuntary retirement provision had to be (i) contained in a bona fide pension or retirement plan, (ii) required by the terms of the plan and not optional, and (iii) essential to the plan's economic survival or to some other legitimate business purpose—i.e., the provision was not in the plan as the result of arbitrary discrimination on the basis of age.

(2) As revised by the 1978 amendments, section 4(f)(2) was amended by adding the following clause at the end: "and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a) of this Act because of the age of such individual * * *." The Conference Committee Report expressly states that this amendment is intended "to make absolutely clear one of the original purposes of this provision, namely, that the exception does not authorize an employer to require or permit involuntary retirement of an employee within the protected age group on account of age" (H.R. Rept. No. 95–950, p. 8).

(b)(1) The amendment applies to all new and existing seniority systems and employee benefit plans. Accordingly, any system or plan provision requiring or permitting involuntary retirement is unlawful, regardless of whether the provision antedates the 1967 Act or the 1978 amendments.

(2) Where lawsuits pending on the date of enactment (April 6, 1978) or filed thereafter challenge involuntary retirements which occurred either before or after that date, the amendment applies.

(c) The amendment protects all individuals covered by section 12(a) of the Act. Accordingly, before January 1, 1979 (the effective date of the amendment to section 12(a) which raised the upper age limit to 70), the amendment applied to individuals who were at least 40 years of age but less than 65 years of age. On and after that date it applies also to individuals who are at least 65 years of age but less than 70 years of age, unless otherwise exempt.

(d)(1) To allow time for the adjustment of collective bargaining agreements, the 1978 amendments provide that

> * * * in the case of employees covered by a collective bargaining agreement which is in effect on September 1, 1977, which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938), and which would otherwise be prohibited by the amendment (to section 12 of the Act), the amendment (to section 4(f)(2) of the Act) shall take effect upon the termination of such agreement or on January 1, 1980, whichever occurs first * * *

(Pub. L. 95–256, section 2(b), 92 Stat. 189)

(2) This delay of up to one year in the effective date of the amendment to section 4(f)(2) applies only to the protection afforded against involuntary retirement and affects only individuals who have attained 65 years of age but not 70 years of age on and after January 1, 1979. Such individuals may not be involuntarily retired unless (i) the retirement age specified in the plan is 65 or above; (ii) the retirement is authorized by the express terms of a bona fide seniority system or a bona fide employee benefit plan which is not a subterfuge to evade the purposes of the Act; and (iii) those terms have been adopted no later than September 1, 1977 and are pursuant to a collective bargaining agreement in effect on September 1, 1977. "Bona fide" shall have the same meaning as in § 860.120(b), as amended, 44 FR 30658 (May 25, 1979).

(3) Where a collective bargaining agreement expired prior to September 1, 1977, and a new agreement was signed subsequent to that date effective retroactively to the expiration date of the previous agreement, the exemption does not apply. The expressed congressional intent was to exempt only those agreements which had been "negotiated" before September 1, 1977 (see S. Rept. No. 95–493, 95th Cong., 1st Sess. (1977), p. 11; H.R. Rept. No. 95–527, Part 1, 95th Cong., 1st Sess. (1977), pp. 8–9).

(e) The exemption of up to one year is inapplicable after the expiration of the collective bargaining agreement in effect on September 1, 1977, whether or not the agreement is extended or renewed. The exemption is in no event applicable after January 1, 1980.

(f) Neither section 4(f)(2) nor any other provision of the Act makes it unlawful for a plan to permit individuals to elect early retirement at a specified age at their own option. Nor is it unlawful for a plan to require early retirement for reasons other than age.

§ 1625.10 Reserved for costs and benefits under employee benefit plans.

For currently applicable interpretations, see 29 CFR 860.120.

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§ 1625.13 Apprenticeship programs.

Age limitations for entry into bona fide apprenticeship programs were not intended to be affected by the Act. Entry into most apprenticeship programs has traditionally been limited to youths under specified ages. This is in recognition of the fact that apprenticeship is an extension of the educational process to prepare young men and women for skilled employment. Accordingly, the prohibitions contained in the Act will not be applied to bona fide apprenticeship programs which meet the standards specified in §§ 521.2 and 521.3 of this chapter.

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Tuesday
September 29, 1981

Part IV

Department of Health and Human Services

Food and Drug Administration

Over-the-Counter (OTC) Human Drugs Which Are Generally Recognized as Safe and Effective and Not Misbranded; Category III Procedures Revised; OTC Drug Review Policy Statement

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 330

[Docket No. 80N-0094]

Over-the-Counter (OTC) Human Drugs Which Are Generally Recognized as Safe and Effective and Not Misbranded; Revision of Procedures Relating to Category III

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the procedural regulations for reviewing and classifying over-the-counter (OTC) drugs to delete the provision that authorizes the marketing of a Category III ingredient or other condition in an OTC drug product after a final monograph. (Category III drugs are those for which there are insufficient data to establish general recognition of safety and effectiveness.) This revision affects the time period during which new data may be submitted to FDA to support the inclusion in a final monograph of a condition not classified in Category I in a proposed monograph or tentative final monograph. The agency is taking this action to conform to the court order issued by the United States District Court for the District of Columbia.

EFFECTIVE DATE: November 30, 1981.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 13, 1980 (45 FR 31422), FDA proposed to revise the OTC procedural regulations (21 CFR 330.10) to delete the provision that authorizes the marketing of a Category III ingredient or other condition in an OTC drug product after a final monograph is established. This action was taken to conform to the holding and order of the United States District Court for the District of Columbia in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). This revision affects the time period during which new data may be submitted to FDA to support the inclusion in a final monograph of those ingredients or indications for use not classified in Category I in a proposed or tentative final monograph.

The agency also announced in the May 13, 1980, proposed rule, a general enforcement policy for initiating regulatory action against those marketed OTC drug products failing to meet monograph conditions.

FDA allowed interested persons 60 days to comment on the proposal. The agency received letters from 14 different sources, including manufacturers, trade associations, consumer organizations, an individual, and a university. The substantive comments received and the agency's conclusions about them are discussed below.

General

1. One comment objected to the proposed revised regulation because it would not significantly expedite the OTC drug review. The comment argued that under the current OTC drug regulations there is no justification for allowing so many opportunities for comment and requiring so many levels of review. The comment suggested amending the regulations to allow one 60-day comment period following publication of the proposed order, which would be followed by a final monograph. The comment argued that this approach would incorporate the opportunity for public comment which FDA typically allows during rulemaking proceedings and that it would expedite the OTC drug review by eliminating the need to prepare a third **Federal Register** document for each group of drugs, and by eliminating a round of comments which now FDA must review. The comment also suggested that, under this approach, FDA allow interested persons 60 days from the effective date of the revised Category III final order to comment on any panel reports or tentative final monographs which were published before adopting the revised rule. An additional opportunity for comment would be justified only when the agency disagrees with the panel and finds an ingredient or labeling claim not generally recognized as safe and effective.

The approach suggested by the comment has been proposed a number of times and has been discussed extensively by the agency. Although FDA agrees that the OTC review could have been structured to omit the tentative final monograph, as the comment recommends, that approach was rejected when the agency established the Review for two reasons. First, the agency recognized that the OTC drug review process vitally affects the interests of OTC drug manufacturers and the public and that procedural fairness is essential to guaranteeing substantive fairness. FDA's procedures for reviewing OTC drugs were cited by the Supreme Court in *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645 (1973) when the Court held that the agency had the authority to decide with administrative finality the new drug status of drug products. The procedures provided in the OTC drug review regulations, including this revision, are designed to assure that all interested persons have an opportunity to express their views at each stage of the process and to have their comments and objections reviewed by the agency before the publication of a final monograph. Second, the Panel reports, when published, have not been evaluated by FDA, but rather are the recommendations of an independent advisory committee composed of outside experts. Under the rules for the OTC review (21 CFR 330.10(a)(6)), the Commissioner of Food and Drugs may publish a proposed order containing the panel's recommendation for comment "before undertaking his own evaluation and decision on the matters involved." FDA has followed this procedure in almost all cases up to now in publishing panel reports. Thus, the proposed order containing the Panel report does not constitute FDA's proposed rule, but is an advance notice of proposed rulemaking; FDA's evaluation and position as an agency is stated for the first time in the tentative final monograph (TFM).

For FDA to implement the approach advocated by the comment, FDA would have to review and evaluate the Panel report in detail before publication and to decide whether to accept or reject every recommendation in turn. This process would consume considerable time.

Moreover, all but one of the Panels have completed their work and most of their reports have been published in the **Federal Register**. Since these reports were in most cases published without the agency's having evaluated the Panel's recommendations, it would be inappropriate for the agency simply to issue a final rule based on comments on the Panel's recommendations. The agency's proposal may differ from the Panel's recommendations as a result of the comments received and the agency's review. Even if no changes are made, the public should have notice of the agency's position on the matter and have an opportunity to respond to it before a final rule is adopted. The public receives that opportunity through the publication of the TFM. If this opportunity were not provided through publication of the TFM, an alternative opportunity would be needed to give the public notice of the agency's position before a final rule is adopted. It is FDA's view that any alternative opportunity, such as an agency review and proposed affirmation or rejection of published

Panel recommendations, would consume as much time as publishing the TFM. In sum, such an approach would be just as time consuming as that adopted in this regulation.

FDA disagrees with the comment that this new procedure will not result in significantly speeding up the Review. Under the original procedural regulations, the formal administrative process for an OTC drug product with a Category III condition extended beyond the final monograph because manufacturers were permitted to continue marketing of such a product pending development of data to support approval of the ingredient or indication for use as generally recognized as safe and effective and not misbranded. Under the revised procedure, the formal administrative process ends with the establishment of a final monograph. Thus, the agency believes that these revised procedures will expedite the OTC drug review process and still provide all interested persons with a fair opportunity for comment.

2. One comment urged that panels take a more reasonable approach to evaluating efficacy data so that ingredients long established as effective will not be relegated to Category III because they lack the kinds of studies that would be required by FDA for a new drug, without marketing experience, that was the subject of a new drug application (NDA) submitted for approval under the new drug approval process. The comment said that it is unreasonable for the panels to ignore the substantial evidence of effectiveness of ingredients derived from long-term use in the marketplace.

The agency advises that the effectiveness standards described in 21 CFR 330.10(a)(4)(ii) were adopted because they represent what medical scientists today consider to be adequate proof of effectiveness. Each panel will initially determine what level of proof is necessary, based on its expertise and experience, to demonstrate effectiveness for a particular drug. FDA will require adequate and well-controlled studies except where the agency waives this requirement as unnecessary or inappropriate. The agency advises that § 330.10(a)(4)(ii) does permit reports of significant human experience during marketing to be used as corroborative support for general recognition of effectiveness.

3. One comment suggested that the regulation be amended to permit submission of data that would allow finished OTC drug products and/or ingredients to be upgraded to Category I. According to the comment, action of this type at this point in the OTC drug review procedure would minimize the number of comments as each monograph is published. The comment argued that safety and efficacy questions should be resolved in terms of the finished OTC product, not in terms of individual ingredients which may be present in the OTC product in very low concentrations where they would not necessarily present a hazard to the user at the use concentrations. Further, the comment said that it is difficult for a manufacturer of a basic chemical that is put into Category II or III to determine the safety and efficacy of that individual chemical in a finished OTC drug product without knowledge of the product in question. The comment also objected to the OTC drug review practice of coding submissions without reference to product name or manufacturer, which in the comment's view makes it virtually impossible for a chemical manufacturer to either furnish data or to determine what data are necessary to change an ingredient from Category III to Category I.

At the beginning of the OTC drug review, the agency determined that the therapeutic category ingredient review approach was fairer and more efficient than a product-by-product approach. The agency's justification for this approach was discussed thoroughly in the proposal establishing the OTC drug review process (37 FR 85; January 5, 1972) and in response to comments in the final rule (37 FR 9464; May 11, 1972). The safety and effectiveness of an ingredient are each determined on the basis of that ingredient's intended use. Information submitted to panels for their consideration may include data on the safety and effectiveness of individual active ingredients as well as data on the safety and effectiveness of finished drug products. Published panel reports list all firms that submitted data to the panels and any marketed products to which the data relate. In addition, a panel's administrative file, which has an index of all submissions, including firms and marketed products, is placed on public display in the FDA Dockets Management Branch (formerly the Hearing Clerk's office) 30 days after a panel report is published. Thus, any interested person would have access to that information.

Testing of Category III Conditions

4. Two comments, in noting that the agency will no longer include recommended testing guidelines in tentative final and final monographs, expressed concern that testing guidelines developed by panels will be discarded. The comments urged that panels still in existence be encouraged, as in the past, to develop testing guidelines, and if guidelines presently exist (that is, are either developed by panels or by FDA), they should be published with a panel's report for others to use if they choose in devising test protocols.

One comment argued that there is no explanation in FDA's preamble as to why these guidelines will no longer be part of tentative final and final monographs. The comment stated that the agency's failure to "articulate reasons for departure" from its earlier practice constitutes improper administrative action. The comment cited the decision in *Rhodia, Inc.* v. *FDA*, 608 F.2d 1376 (D.C. Cir. 1979) in support of this argument. According to the comment, both equitable and legal considerations mandate including testing guidelines in OTC drug monographs. The comment further contended that if a panel's proposed testing guidelines are not retained, FDA should issue a notice, either in the preamble to the proposed monograph or in a separate Federal Register document, setting forth the reasons for such action, and providing industry with an opportunity to comment. The comment pointed out that the industry's single greatest expenditure of time with the panels has been in the development of appropriate testing guidelines, and that it is unfair for FDA to exclude from the monographs this important work. Further, the comment said, it was unfair and improper for FDA to begin to publish tentative final monographs without including testing guidelines for Category III conditions until FDA first publishes proposed regulations detailing its informal procedures for consulting with industry on testing guidelines and provides opportunity for public comment.

FDA advises that neither the Federal Food, Drug, and Cosmetic Act (the act) nor the OTC regulations promulgated thereunder require testing guidelines to be published as part of OTC panel reports or tentative final monographs. In the past, panels have recommended and may continue to recommend in their reports the type of further testing required to upgrade Category III ingredients or other conditions and the time period within which such testing might reasonably be concluded. If panels do recommend testing guidelines, these guidelines will continue to be published as part of the panel report.

Panels have and may continue to recommend guidelines for the testing of those drugs that do not already have adequate tests in order to be generally recognized as effective. Previously,

under the agency's rules, that additional testing could be done after a final rule was issued finding the product to be Category III. As the court determined in *Cutler*, it is not legally permissible for the agency to authorize those products to remain on the market while additional testing is conducted when the products have been determined under a final rule not to be in compliance with the act.

The principal purpose of the OTC review is to determine which OTC drug products comply with the law and which do not. It is the responsibility of the manufacturer of a drug to have adequate tests that meet the statutory requirements before marketing the drug. Providing testing guidelines in the preamble to the TFM requires additional resources and time, and could lead to delay in the issuance of the TFM. The agency intends to focus its efforts in drafting the TFM on making an appropriate determination of whether products presently comply with the law, rather than on providing advice as an agency on the type of additional testing that needs to be done on noncomplying products to bring them into compliance.

Furthermore, FDA believes that there may be Category III conditions that industry is not interested in upgrading to Category I status. Therefore, it would be a waste of the agency's resources to review guidelines that will not be used. Testing guidelines have been included in panel reports and in the agency's preamble to the TFM only as suggestions for industry. The guidelines have never been a part of an OTC rule, nor were the guidelines binding on industry. FDA does recognize, however, the value of some kind of communication between industry and FDA Bureau of Drugs' scientists, to the extent agency resources permit, on the tests industry plans to do.

Accordingly, FDA is publishing elsewhere in this issue of the **Federal Register** a notice describing the manner in which the agency intends to communicate with industry in response to industry requests on testing guidelines, protocols, and test data. The preamble to the May 13, 1980, proposed rule stated the purpose and major feature of the agency policy in making these communications, and the notice provides further details. The notice also offers interested persons the opportunity to comment on the notice for 60 days. Comments received will be considered in any agency decision to amend or modify the policy. Any comments on the notice will be reviewed promptly, and any changes that are warranted will be made.

The agency emphasizes that FDA intends to meet with manufacturers at their request and as early in the OTC drug review process as possible to discuss protocols and other testing issues involving those conditions that industry is interested in upgrading. As before, FDA encourages manufacturers to work with one another to arrange for the necessary studies, and thus avoid unnecessary human testing.

5. One comment expressed concern that publication of tentative final monographs without testing guidelines would have the effect of delaying the start of any needed testing. Under FDA's new policy statement (published elsewhere in this issue of the **Federal Register**), prior to beginning testing the manufacturer may initiate informal communications with FDA to develop testing guidelines. The comment argues that this procedure may consume considerable time. Furthermore, the comment said FDA has drastically foreshortened the endpoint allowed for completion of testing by allowing only 1 year after publication of a tentative final monograph for the submission of new data. A manufacturer may not be told by FDA until the tentative final monograph issues that it must do further testing, and at that stage a manufacturer would be allowed only 1 year to submit results, even though the testing may reasonably require far more than 1 year to complete. The comment suggested the following alternatives to FDA's proposal:

a. In appropriate cases, instead of closing the record for submission of new data 1 year after publishing a tentative final monograph, FDA should leave the record open as needed for completion of certain specific studies that have been promised for completion, and delay issuing a final monograph during this period. The comment stated that there is no requirement in *Cutler* v. *Kennedy* that the agency publish a final monograph until all pertinent ongoing studies have been completed and considered by the agency.

b. A final monograph need not address all conditions encompassed by the affected class of drugs, but rather only those conditions for which FDA has reached final conclusions. Other conditions of use, for which further administrative consideration properly is pending, need not be addressed in a final monograph until their administrative consideration is completed. Such action would not violate *Cutler* v. *Kennedy* because rulemaking would be pending on those conditions for which further data were needed, and no final monograph would be issued ruling on such conditions (or establishing any inference with respect to their legality) until the agency reviewed the relevant data. The comment pointed out that FDA's proposal already sets a precedent for separately addressing distinct conditions of use in successive monographs by proceeding with separate orders for certain Category II conditions within a class of drug product, without waiting to rule on the other conditions of use.

As explained in the response to comment 4 above, testing guidelines will continue to be published as part of panel reports if panels have recommended such guidelines. Further, as stated above, the agency intends to meet with manufacturers at their request and as early in the OTC review process as possible to discuss protocols and other testing issues involving those conditions that industry is interested in upgrading. Thus, FDA does not agree that publishing tentative final monographs without testing guidelines, where such guidelines have been recommended by a panel, will delay any necessary testing.

The agency is committed to completing the OTC drug review expeditiously. The regulations under § 330.10 establish an orderly administrative process for accomplishing this review. Once FDA has established its final position on a category of OTC drug products by publishing a final monograph, any OTC drug product not in compliance with an applicable monograph or not covered by an approved new drug application is subject to regulatory action. FDA does not intend to delay the OTC drug review administrative process while manufacturers complete studies and submit the test data to the agency for review and evaluation. Thus, the alternative approaches proposed by the comment are not acceptable. The agency recognizes that industry believes strongly that there may be extraordinary circumstances which may warrant FDA's consideration of reopening of an administrative record. Under revised § 330.10(a)(7)(v), the agency may consider data submitted after the administrative record has closed and before the final monograph is published if the Commissioner finds good cause has been shown. The agency will consider requests for the reopening of an administrative record on a case-by-case basis.

Contents and Time of Closing of the Administrative Record

6. One comment argued that the proposed 12-month testing period is just as inconsistent with the act as the

Category III regulation which Judge Sirica held to be illegal. The comment stated that in both situations, the act requires that OTC drugs first sold after 1962 be generally recognized as safe and effective before they are placed on the market. The comment stated that the Supreme Court held in *Weinberger* v. *Hynson, Westcott and Dunning*, 412 U.S. 609 (1973) that the manufacturer of any drug marketed pursuant to the generally recognized as safe and effective exception (and this includes virtually all OTC drugs) must be able to show by "substantial evidence" that the drug is "safe and effective," and, in addition, that there is an "expert consensus" that the drug is safe and effective. 412 U.S. at 629–632. The comment further stated that the Court reaffirmed this standard recently in *United States* v. *Rutherford*, 441 U.S. 544, 549–550 n. 7 (1979). The comment argued that Judge Sirica found that the Category III regulation was illegal because it authorized the marketing of OTC drugs even though FDA had found that those drugs lacked evidence adequate to find them generally recognized as safe and effective. Because they were not generally recognized as safe and effective, as required by the act, FDA could not authorize their sale. This revised rule would specifically delay any administrative action, including the final monograph, pending a 1-year testing period which follows the agency's tentative conclusion (expressed in the tentative final monograph) that the drug is not generally recognized as safe and effective. In the face of that tentative conclusion, it cannot be said that there is an "expert consensus" that the drug is "safe and effective." Therefore, sale of the drug is illegal under *Hynson*, and FDA has no authority to adopt regulations that would delay final action on such drugs pending testing.

The comment is correct that the act requires that OTC drugs sold after 1962 be generally recognized as safe and effective. Indeed, the OTC Drug Review was set up to determine in as fair and efficient a manner as possible which OTC drugs can be so recognized.

The comment's reliance on *Cutler* in support of its position, however, is inapposite. Judge Sirica did not address the legal status of OTC products containing a Category III condition during the rulemaking process; the court addressed only the status after publication of a final order. Moreover, FDA does not "authorize" the marketing of OTC drugs during the pendency of the rulemaking. The final monograph for each therapeutic class will constitute the agency's position on the generally recognized as safe/generally recognized as effective (GRAS/GRAE) status of products containing ingredients within its scope. Until a final monograph has issued, however, the legal status of products containing ingredients within its scope is the same as it was before the Review began. They are either GRAS/GRAE or they are not.

The comment incorrectly assumes that the 12-month period following the tentative final monograph is for the sole purpose of giving manufacturers additional time for testing to upgrade a condition to Category I status. Rather, that period is the fixed time during which persons may submit data to the agency without petitioning to reopen the administrative record. These data may consist of additional data and information that FDA, either from informal meetings with manufacturers to discuss testing requirements or after a review of previously submitted data, has determined are necessary to upgrade a condition to Category I. In addition, manufacturers may submit new data from testing previously conducted. Finally, FDA rejects the argument that these revisions to the OTC procedural regulations will delay the final administrative decision on a particular class of ingredients. As stated in the preamble to the May 13, 1980, proposed rule, based on the agency's experience with comments filed to panel reports and with objections and requests for a hearing filed in response to the tentative final and final monographs published to date, the time necessary for the agency to conduct essential scientific and administrative review and evaluations that must be completed before a final rule is issued is at least 12 months. The agency expends a substantial amount of time on the administrative review and evaluation of the grounds for objections and responding to these objections, on reviewing and responding to requests for hearings, and on the preparation and conduct of any hearings that are warranted. The agency also reviews and evaluates new data as they are received. These scientific and administrative reviews and evaluations by the agency proceed on parallel, not sequential, tracks with the time permitted for the submission of new data. Therefore, permitting the administrative record to remain open for a fixed time period following a tentative final monograph will not, in the agency's judgment, delay the overall OTC drug review process.

7. One comment argued that the presumptions in the justifications for this new regulatory scheme, that "manufacturers must, in the future, submit, before the final monograph, the data necessary to resolve the issues that previously resulted in a Category III classification" and that "were the administrative record to remain closed, each particle of new information would have to be submitted with a petition to reopen the administrative record," are not required by law. They are based on FDA's own procedures, including the procedures proposed to be established by the proposed rule. The comment suggested that the agency could and should have proposed that the monograph become final shortly after the comment period on the tentative final monograph, providing only enough time for FDA evaluation of the comments. Any new data relating to safety and effectiveness could be treated separately. The comment further suggested that FDA could and should have proposed a procedure that permits "each new particle of information" submitted to establish safety and efficacy to be submitted for evaluation without a petition to reopen the formal record. This procedure should leave the decision with the manufacturer to determine when it believes enough such particles of information have been submitted that are not questioned by FDA to justify a petition to reopen and amend the administrative record. Use of this procedure would eliminate the unnecessarily burdensome administrative workload that the proposed rule assumes would otherwise result.

The agency's justification for the procedures provided in the OTC drug review regulations, including this revision, is addressed in the responses to comments 1 and 6 above. For the reasons set forth in those responses, FDA rejects the suggestion that FDA is providing more time than is necessary after a tentative final monograph for its evaluation of comments before publishing a final monograph.

Concerning the comment on reopening of the administrative record, FDA advises that it is standard procedural practice before all administrative bodies and courts that the record in any proceeding be closed at some specified time in order to prevent continuous submission of new data and information. Thereafter in the proceeding, arguments and decisions may be made solely on the basis of the data and information already contained in the record. Court appeal will be based solely on that record and the information it contains. The time specified for closing of the administrative record after a proposed monograph and after a tentative final

monograph is consistent with standard procedural practice. Permission to submit additional data or information may be granted, at the discretion of the Commissioner, on the basis of a petition to reopen the administrative record to include such material.

8. Comments on proposed § 330.10(a)(7)(iii) urged the agency to provide for the granting of extensions beyond the 12-month period after a tentative final monograph for the submission of new data and information. The comment argued that in some instances 12 months may be insufficient for Category III testing, for example: (1) when it is necessary to develop methodology for testing which does not now exist, panels have generally recommended not less than 2 years and up to 4 or 5 years for Category III testing in these cases; (2) the time period necessary for the development of protocols for the testing of seasonal products such as cough and cold products and sunscreen agents may be lengthened considerably by their seasonality, because test protocols are frequently designed by running preliminary tests using different protocols and designing the final protocol from the knowledge obtained from running the earlier tests; (3) animal testing to resolve Category III safety issues may have to await the development of methodology and may involve long-term studies which take more than a year; and (4) testing time may be lengthened by difficulties in recruiting investigators or testing facilities. Another comment said it would be virtually impossible to complete, let alone prepare a written presentation of, studies during that 12-month interval.

One comment argued that a small company cannot afford the immense costs involved in developing experimental methodology and validating such methodology clinically. A time period of, for example, 5 years which was permitted for Category III testing in cough/cold products, would enable a small company to draw on the experience and expertise of larger companies in developing suitable protocols and methodology and permit the small company to focus its entire attention and limited resources in undertaking the necessary clinical studies while having the benefit of much needed time over which to spread those new investigative costs and make them more affordable.

A comment argued that a period of 24 months following a tentative final monograph is the minimum time that is reasonable for interested persons to evaluate the comments stating the basis for Category III classification, devise a test program and protocols, consult with FDA as to whether the proposed test program and protocols meet FDA criteria for well-controlled studies that will meet the standards to satisfy a Category I classification, implement and carry out studies, process and evaluate resulting data, and submit data in proper form to FDA. Further, the comment argued that no significant risk to the public health will result from the additional 12-month period because a Category III ingredient usually has been marketed and used for many years, with substantial documentation of safety and requires only substantiating probable efficacy, with well-controlled studies or data.

The agency advises that under the provisions of 21 CFR 10.30 and 330.10(a)(10) any interested person may petition to reopen the administrative record to include new data at any time during the OTC drug review administrative process. The provisions of § 330.10(a)(7)(v) have been revised to clarify that the Commissioner may consider new data after the ordinary time for submissions if good cause to do so has been shown, for example, when a TFM proposes to reclassify an ingredient as Category III even though the Panel considered it Category I. The Commissioner will allow reopening of the record only in extraordinary cases. Thus most records will remain closed. The petition must demonstrate good cause why the new data could not be obtained and submitted within the time specified by § 330.10(a)(7)(iii) of this final rule. The Commissioner may grant or deny the petition at the Commissioner's discretion.

The agency is not persuaded by the reasons given by the comments for revising the regulation to provide for general extensions of the 12-month period. Manufacturers have, in most cases, been aware of Category III classification since the publication of panel reports. Substantial numbers of tests aimed at upgrading Category III conditions to Category I have already been completed and the results submitted to FDA for review and evaluation prior to publication of the relevant tentative final or final monograph. Under the agency's policy described in the notice published elsewhere in this issue of the **Federal Register**, the FDA Bureau of Drugs will inform manufacturers of its tentative determination that additional data are needed or that the data submitted are adequate to establish Category I status so that further testing appears unnecessary. Further, the agency has consistently emphasized that each manufacturer of a product with a Category III condition need not undertake the necessary testing. The agency has always encouraged firms to cooperate, in an open and nonrestrictive manner, and to work with each other or with trade associations in arranging for the necessary studies.

Regarding the concern that methodology may not always exist, FDA advises that some classes of drug products in the OTC drug review are also classes of drug products that have been approved under the new drug approval process, for example, cough/cold products or other seasonal products. Methodology used for testing safety and effectiveness for the approval of new drugs can also be used for testing OTC drug products containing ingredients in the OTC drug review.

9. One comment asserted that the 12-month period for reopening the administrative record after the tentative final monograph may not afford sufficient time to gather and to submit new data and suggested that this could be resolved by making drafts of monographs available for inspection but not comment.

The agency advises that the "information copy" of each panel's draft report, containing all the Panel's recommendations on a particular therapeutic class is routinely made available in the Dockets Management Branch, prior to the panel's acceptance of its report at the final panel meeting. The agency concludes, however, that tenative final and final monographs should not be made publicly available until the agency has reviewed and evaluated all relevant material and published its decision in the **Federal Register**. Drafts of any document still being reviewed within the agency do not represent an agency decision, and therefore it would not be appropriate to make such a document publicly available.

10. One comment suggested that because the tenative final order provides the initial notice of FDA's views, as distinguished from the views of the advisory review panel, it would be appropriate to invite comments, not just objections, concerning all aspects of a tentative final monograph, including general discussions with respect to policy, etc. Furthermore, the comment suggested that FDA provide 90 days instead of 60 days for comment in response to a tentative final monograph, the same time period provided for comment in response to a "proposed monograph." An extension of the

comment period from 60 to 90 days would not delay FDA action because the agency already proposes to keep the record open for the submission of additional scientific data, and comments upon such data, for 14 months after publication of the tentative final monograph.

The agency has amended the regulation (§330.10(a)(7)(i)) to allow comments as well as objections and requests for hearings to be filed within the 60-day period following publication of a tentative final monograph. The agency notes that comments on the published panel report and proposed monograph are invited in order to provide an opportunity for full public comment before the agency reaches its tentative decision on the matters involved. The agency continues to encourage all interested persons to comment fully on the proposed monograph and not to delay offering suggestions until the agency's tentative final monograph has been published. The agency rejects the suggestion to provide for a 90-day comment period. FDA believes that, especially in view of the prior opportunities for discussion and comment on the issues before and after publication of the panel report and proposed monograph, the 60-day period now provided is adequate for both the filing of objections and comments to a tentative final monograph.

11. Two comments urged that because FDA acknowledges the importance of maintaining an open administrative record, the administrative records of the five published tentative final monographs be reopened upon publication of this final rule to allow 12 months for the submission of new data and information and 2 months for comments on that data. The comments contended that, without such a reopening of the record, manufacturers of products now subject to those tentative final monographs may have little or no time to meet with FDA to develop testing guidelines or review protocols between the effective date of this final rule and the closing of the 12-month or 2-month period applicable to a given tentative final order. Another comment urged that FDA allow no more than 2 additional months for comment on any tentative final monograph which has been published between FDA's notice of intent (44 FR 61608; October 26, 1979) and publication of this final rule.

The agency rejects the comment to reopen the administrative record for previously published tentative final monographs at this time. FDA believes that manufacturers have already had ample opportunity to conduct the necessary studies for those ingredients or other conditions which they are interested in upgrading and to submit the data to the agency for review. As discussed in the response to comment 8 above, manufacturers have, in most cases, been aware of Category II and III classifications since publication of the respective panel reports. Further, the administrative records for Topical Antimicrobial, Antiemetic, Nighttime Sleep-Aid, and Stimulant OTC drug products were reopened for a 5-month period for the submission of new data and 2 additional months for the submission of comments (see 44 FR 61609; October 26, 1979). The agency also subsequently accepted into the administrative records all data on ingredients covered by the published TFM's that had been previously submitted outside of the periods when the administrative records were open (see 45 FR 18398–99; March 21, 1980). Substantial amounts of data have been submitted for these categories of drugs. Only extraordinary circumstances would warrant reopening of the administrative record for any category of drugs, and FDA will make that determination on a case-by-case basis. The tentative order on OTC emetic drug products published in the **Federal Register** of September 5, 1978 (43 FR 39544) contained no Category II or III ingredients or other conditions. Therefore, FDA sees no need to reopen the administrative record for this category of drugs.

12. One comment said that, based on the language used by the agency to justify holding the administrative record open for 14 months following a tentative final monograph, it was clear that the time period was intended to permit companies to submit new evidence of safety and effectiveness to justify continued marketing of a drug, not to simplify the administrative processes of finalizing the monograph. The comment said that the time period merely reduces the 2 to 5 years manufacturers previously had to conduct testing and submit safety and effectiveness data to FDA to 14 months. The comment argued that FDA's action clearly is not in accord with the court's order in *Cutler* because the court's decision was not based on the reasonableness of the time period allowed for establishment of safety and efficacy by new evidence, but was based on the lack of statutory authority allowing the Commissioner to permit continued marketing of a drug that has not been established as safe and effective. Thus, according to the comments, merely reducing the time period during which marketing is allowed fails to bring the regulatory scheme into compliance with the court's order and the statutory requirement, despite any assertions of administrative convenience made by FDA.

As discussed in the response to comment 6 above, and in the preamble to the proposed rule, the agency must complete certain scientific and administrative reviews and evaluations before issuing a final rule. The agency believes that permitting manufacturers to take advantage of this same time period for the submission of new data without petitioning to reopen the administrative record will simplify the agency's administrative tasks, will not delay the overall OTC drug review process, and is consistent with the court's order in *Cutler*.

13. One comment stated that to permit FDA to reclassify a claim or ingredient from Category I to Category III without affording a grace period of at least 3 years for the collection of data to upgrade the status would impose a distinctly unfair burden on industry. Therefore, the comment suggested that at least 3 years should be provided for the collection of efficacy data to upgrade an ingredient or claim to Category I in those instances where: (1) the Panel recommended classification as Category I, but the agency disagrees and so states in publishing a panel's recommendations; (2) the Panel recommended Category I status, but the agency disagrees and assigns a Category III designation in the tentative final monograph; and (3) the tentative final monograph designates Category I, but FDA intends to assign Category III status in the final monograph.

FDA believes that the situations posited by the comment will rarely occur. Further, if the agency does disagree with the Panel's classification of an ingredient in Category I, and announces that disagreement at the time the Panel Report is published, the manufacturer will have as much notice as it would had the Panel classified the ingredient in Category III. Thus, there should be adequate time for any necessary studies to be completed before the time that the administrative record closes.

FDA recognizes that an agency reclassification of a Category I ingredient to Category III in the tentative final monograph would present a specialized problem in that industry would have only 12 months to complete testing and submit the data to the agency. In such cases, the FDA Bureau of Drugs would ordinarily notify industry through the system of informal communications explained in the notice

that is discussed under comment 4 above and that is published elsewhere in this issue of the **Federal Register** as soon as it has reached a tentative decision to request the Commissioner to reclassify the ingredient in question into Category III in the tentative final monograph, so that testing could be initiated as soon as possible.

The proposed OTC procedural regulation stipulated that data submitted after the closing of the administrative record following publication of the tentative final monograph would be considered only after publication of a final order as a petition to amend the monograph (45 FR 31422, 31425). Section 330.10(a)(7)(v) (21 CFR 330.10(a)(7)(v)) has been amended to permit exceptions if good cause is shown, such as when there has been an agency reclassification of an ingredient from Category I to Category III in the TFM. Ordinarily, data submitted after the closing of the administrative record will not be reviewed until after publication of the final monograph. The revised regulation permits interested persons to petition the agency to reopen the administrative record before publication of a final monograph if they believe that there are exceptional grounds for the Commissioner to exercise the Commissioner's discretion to reopen the record.

Should FDA decide, based on comments to the TFM or new data and information, that a Category I ingredient should be reclassified to nonmonograph status in the final monograph, such an ingredient will be subject to regulatory action as specified in that document. It is the agency's view that such reclassification will occur only on the basis of unusually clear evidence that an ingredient cannot be generally recognized as safe and effective. Therefore, it would not be appropriate in that situation to defer regulatory action pending submission of new data.

14. One comment urged that the agency approve promptly all studies previously submitted while the administrative record was considered open, which justify the upgrading of ingredients and claims from Category III to Category I. The comment argued that any further delay in approving these studies will cause sponsors who are uncertain of the future status of the products involved to make unnecessary expenditures of time, effort, and money.

The agency advises that the policy statement, published elsewhere in this issue of the **Federal Register**, provides a mechanism through which manufacturers may contact the agency to determine the status of data previously submitted before initiating further studies. FDA believes that the opportunity for communications described in the notice will aid in reducing unnecessary expenditures of time, money, and effort by manufacturers.

15. Two comments referred to the **Federal Register** notices of March 21, 1980 (45 FR 18398). In those notices, FDA accepted into the administrative record data submitted as comments on proposed and tentative final monographs after the closing of the administrative record. FDA announced that it was treating the comments as petitions to reopen the various administrative records and was granting those petitions. The comment interpreted this revised Category III regulation to state that such data, having been accepted into the administrative record by virtue of the March 21 notices, will be reflected in tentative final and final monographs in the same way as data submitted during the original comment period. The comment asked whether this interpretation is correct.

The comment has interpreted the regulation correctly.

Category II Conditions

16. Two comments on proposed § 330.10(a)(7)(ii) noted that any given ingredient in the OTC drug review may have more than one indication for use, may be reviewed by more than one panel, and may be categorized differently by the panels. The comments said that if FDA chooses to expedite regulatory action against an ingredient by publishing a separate tentative order for that ingredient, FDA should confine such action to the ingredient when it is used for the particular disfavored indication.

The agency advises that any tentative order that FDA publishes for an ingredient classified by a panel in Category II and for which no substantive comments in opposition to the panel report or no new data are submitted will be confined to the use of that ingredient for specific indications within a specific category of drugs.

17. One comment focused on FDA's proposal to issue separate "early" tentative final and final orders on ingredients recommended by a panel as Category II, for which the agency does not receive substantive comments in opposition to the panel report or new data and information. The comment contended that FDA should act similarly for ingredients recommended by a panel as Category I for which no comments are received disputing that status.

The agency advises that the reason for expediting completion of the OTC drug panel review for ingredients recommended by a panel as Category II and for which the agency does not receive substantive comments in opposition to the panel report or new data and information is to remove from the market as quickly as possible drug products containing ingredients not generally recognized as safe and effective. Substantive comments are those that warrant response by the agency through a TFM, with an opportunity for objections, and the term does not include comments that are merely conclusory or rely on legally irrelevant or inconsequential grounds for support. This action clearly serves the public interest. OTC drug products containing ingredients recommended as Category I by a panel for which no comments are received disputing that status will retain that status at the final monograph stage unless new information is developed indicating that the ingredient ought not to be included in the monograph. Therefore, the ingredient will remain on the market. Agency resources can be more efficiently used in expediting those parts of the OTC drug review that are necessary for the protection of the public health.

The Commissioner may, of course, continue to act, without observing all of the procedures governing the full OTC review, when the Commissioner finds it necessary to do so. Thus, the Commissioner may issue a rule through notice-and-comment procedures, without following the usual OTC review procedure, or take other regulatory action, when the Commissioner finds it necessary to protect the public from a significant safety risk posed by an OTC product. On a number of occasions the agency has used only notice-and-comment procedures in issuing rules to deal with problems needing prompt action posed by an OTC product, e.g., 21 CFR 310.508 (halogenated salicylanilides), 21 CFR 310.525 (sweet spirits of nitre).

OTC Drug Review Classification Terminology

18. One comment agreed with the proposed revisions and stated that the terms "monograph conditions" or "nonmonograph conditions" will be fair and equitable once the rule has been enforced for some period of time. The comment expressed concern, however, that during the early stages following implementation of this new policy, inequities may develop because it is likely that all previous Category II and Category III products will be treated as "nonmonograph conditions." Thus the old distinctions between Category II and

III will no longer be operative, and Category III products will be tainted in the eyes of the consumer by their association with Category II products. The comment suggested that during the next several years, until the revised policy has had time to become operative, FDA should establish a special category for products currently in Category III, on which testing is being done, so that these products will not be treated as "nonmonograph conditions."

The agency has carefully considered the comment and concluded that no revision of the regulation as proposed is necessary. The agency believes that it is appropriate to describe as "nonmonograph conditions" all those conditions that have not been found to be generally recognized as safe and effective and thus not included in the monograph. All "nonmonograph conditions" are subject to regulatory action; however, FDA's enforcement policy recognizes that different nonmonograph conditions pose varying public health problems. Accordingly, FDA's enforcement policy gives higher priority to those conditions, ingredients, or claims that pose the greatest risk to the consumer.

19. One comment suggested retaining the terms "Category I" and "Category II" after publication of the final monograph. Because of its usage over the past 8 years, the OTC drug industry understands that Category II products are illegal. Further, because Judge Sirica held the sale of Category III products to be illegal, all products that are not generally recognized as safe and effective should be treated equally and should be classified in Category II. The comment argued that substituting the terms "monograph" and "nonmonograph" conditions could have the effect of suggesting that "nonmonograph" conditions are not necessarily illegal. Another comment objected, without stating a reason, to the agency's proposed terms "monograph conditions," and "nonmonograph conditions."

The agency does not agree that the term "nonmonograph condition" in any way suggests that such conditions may not be illegal. Only OTC drug products meeting the conditions of a monograph or having an approved new drug application may be legally marketed. Therefore, any OTC drug product containing a condition not included in a monograph will be subject to regulatory action unless the drug product has an approved new drug application. The agency considers the term "nonmonograph condition" to be appropriate and not to be misleading.

Regulatory Policy

20. One comment said that the enforcement priorities proposed for drugs that fail to meet the monograph conditions are not rationally justified. Another comment objected both to the order of the enforcement priorities and to their disclosure, but would not object to FDA's stating that it will place special emphasis on products which present health hazards or on the most frequently prescribed products. The comment also argued that FDA should proceed vigorously against any manufacturer who markets an ineffective drug product, regardless of whether the drug product was formerly in Category II or Category III, and regardless of whether a petition to amend the monograph or new drug application is pending. Both comments argued that the effect of publishing an enforcement priority list will be to encourage manufacturers of a product with a lower enforcement priority to continue to market that product on the assumption that the agency will not have the resources to proceed against them. One comment said that assigning first priority to "products that present a potential health hazard" and then also listing those categories of conditions having lower priorities imply that products in these latter categories do not present "a potential health hazard." The comment argued that this is inaccurate because any product not established as safe and effective presents a potential health hazard. When the degree of that hazard is determined to be substantial, according to the comment, FDA ought to assign it first priority. The comment recommended that this provision of the proposed rule be deleted or replaced with a priority listing that is fully justified and that leaves enough flexibility to avoid signaling areas of nonenforcement.

The enforcement priorities are not of the OTC procedural regulations. They were included in the preamble to the May 16, 1980, proposed rule only to advise the public that FDA has developed a broad policy of taking regulatory action first against those products that most affect the public health, commensurate with agency resources and basic principles of equity. FDA agrees with the comment that any product that presents a potential health hazard, whether caused by safety or effectiveness problems, should have the highest priority. That is the system proposed by FDA, and explained in the preamble to the proposed rule.

21. One comment believed it unwise to set enforcement priorities when so few final monographs have been published, because it is likely that important considerations may have been overlooked. For example, the comment said that, after safety, the next most determinative factor should be the extent of exposure of the public to the drug product in question, and that FDA should place special emphasis on the most frequently used drugs. Yet this factor does not appear in the enforcement priorities, and there may be other factors which will come to light only when a substantial number of final monographs have been published.

FDA emphasizes that this policy is not necessarily a final and comprehensive statement of FDA's enforcement posture with respect to all aspects of OTC drug compliance. The policy is subject to change, depending on various factors existing in the marketplace. FDA agrees with the comment that the extent of public exposure to a drug ought to be a factor in assigning enforcement priorities to OTC drug products. The enforcement priorities will be modified accordingly. As discussed in the proposal, FDA may further modify or amplify the enforcement policy at any time, or take regulatory action outside the priorities listed should such action be deemed necessary.

22. One comment on FDA's enforcement policy questioned the accuracy and legality of FDA's statement that after a final monograph is issued, only OTC drug products meeting the conditions of the monograph or having an approved new drug application may be legally marketed. The comment argued that if data submitted to the agency after closing of the administrative record following publication of a tentative final monograph show that a particular drug is in fact generally recognized as safe and effective and not misbranded, it would be preposterous for FDA to argue that the drug was technically illegal simply because it had not been approved in FDA's final monograph. The comment further argued that if new data became available after FDA closes the record in an OTC drug review rulemaking proceeding, FDA's monograph, issued without consideration of the new data, would not be controlling with respect to the significance of the new data. Instead, in any attempted FDA enforcement action, there would be *de novo* judicial review of the significance of the new data. The comment cited *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402, 415 (1971) saying "* * * there may be independent judicial fact finding when issues that were not before the agency

are raised in a proceeding to enforce nonadjudicatory agency action."

While the comment is correct that issues not before the agency in an administrative proceeding may be litigated in court, such *de novo* judicial review is time consuming and wasteful. Avoiding such litigation was one of the reasons for establishing the OTC Drug Review as a rulemaking proceeding. The OTC drug review process establishes an orderly administrative procedure for determining those conditions that are generally recognized as safe and effective. Once a final monograph is effective, any OTC drug product not in compliance with the monograph or not covered by an approved new drug application is subject to regulatory action. Industry is urged to conduct the necessary testing and to submit data promptly to FDA within the time periods provided by the OTC drug review procedural regulations in order to upgrade an ingredient to monograph status at the final monograph stage, thus obviating the possibility of such litigation.

23. One comment argued that enforcement priority 6 (products that contain an ingredient or claim excluded from the monograph because of insufficient information and for which a full and complete petition to amend the monograph is pending before the agency) and priority 7 (products that contain a nonmonograph ingredient or claim for which there is a pending new drug application (NDA) before the agency) will, if retained, encourage manufacturers to file frivolous petitions and NDA's in order to avoid enforcement by FDA.

The agency disagrees with the comment. Petitions and NDA's pending before the agency will be given a preliminary review by FDA upon receipt to ensure that they are full and complete. The agency expects to use its available resources to the extent possible to ensure that products containing nonmonograph ingredients or indications are removed from the market.

In accordance with Executive Order 12291, FDA has determined that neither this final rule nor the related notice of policy statement published elsewhere in this issue of the **Federal Register** constitutes a major rule. This determination is set forth in the Threshold Assessment under Executive Order 12291 for the final rule revising OTC procedural regulations relating to Category III and for the accompanying policy statement. A copy of this document is on file 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.

PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701(a), 52 Stat. 1040-1042 as amended, 1050-1053 as amended, 1055 (21 U.S.C. 321, 352, 355, 371(a))) and 21 CFR 5.11 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 330 is amended in § 330.10 by revising paragraph (a) (7), (9), (10), and (12) and by deleting paragraph (a)(13) as follows:

§ 330.10 Procedures for classifying OTC drugs as generally recognized as safe and effective and not misbranded, and for establishing monographs.

* * * * *

(a) * * *

(7) *Tentative final monograph.* (i) After reviewing all comments, reply comments, and any new data and information, the Commissioner shall publish in the **Federal Register** a tentative order containing a monograph establishing conditions under which a category of OTC drugs is generally recognized as safe and effective and not misbranded. Within 60 days, any interested person may file with the Dockets Management Branch, Food and Drug Administration, written comments or written objections specifying with particularity the omissions or additions requested. These objections are to be supported by a brief statement of the grounds therefor. A request for an oral hearing may accompany such objections.

(ii) The Commissioner may publish in the **Federal Register** a separate tentative order containing a statement of those active ingredients reviewed and proposed to be excluded from the monograph on the basis of the Commissioner's determination that they would result in a drug product not being generally recognized as safe and effective or would result in misbranding, and for which no substantive comments in opposition to the panel report or new data and information were received by the Food and Drug Administration pursuant to paragraph (a)(6)(iv) of this section. Within 60 days, any interested person may file with the Dockets Management Branch, Food and Drug Administration, written objections specifying with particularity the provision of the tentative order to which objection is made. These objections are to be supported by a brief statement of the grounds therefor. A request for an oral hearing may accompany such objections.

(iii) Within 12 months after publishing a tentative order pursuant to paragraph (a)(7)(i) of this section, any interested person may file with the Dockets Management Branch, Food and Drug Administration, new data and information to support a condition excluded from the monograph in the tentative order.

(iv) Within 60 days after the final day for submission of new data and information, comments on the new data and information may be filed with the Dockets Management Branch, Food and Drug Administration.

(v) New data and information submitted after the time specified in this paragraph but prior to the establishment of a final monograph will be considered as a petition to amend the monograph and will be considered by the Commissioner only after a final monograph has been published in the **Federal Register** unless the Commisisoner finds that good cause has been shown that warrants earlier consideration.

* * * * *

(9) *Final monograph.* After reviewing the objections, the entire administrative record including all new data and information and comments, and considering the arguments made at any oral hearing, the Commissioner shall publish in the **Federal Register** a final order containing a monograph establishing conditions under which a category of OTC drugs is generally recognized as safe and effective and not misbranded. The monograph shall become effective as specified in the order.

(10) *Administrative record.* (i) All data and information to be considered in any proceeding pursuant to this section shall be submitted in response to the request for data and views pursuant to paragraph (a)(2) of this section or accepted by the panel during its deliberations pursuant to paragraph (a)(3) of this section or submitted to the Dockets Management Branch as part of the comments during the 90-day period and 30-day rebuttal comment period permitted pursuant to paragraph (a)(6) of this section or submitted to the Dockets Management Branch during the 12-month period or as part of the comments during the 60-day period permitted pursuant to paragraph (a)(7) of this section.

(ii) The Commissioner shall make all decisions and issue all orders pursuant to this section solely on the basis of the

administrative record, and shall not consider data or information not included as part of the administrative record.

(iii) The administrative record shall consist solely of the following material: All notices and orders published in the **Federal Register**, all data and views submitted in response to the request published pursuant to paragrah (a)(2) of this section or accepted by the panel during its deliberations pursuant to paragraph (a)(3) of this section, all minutes of panel meetings, the panel report(s), all comments and rebuttal comments submitted on the proposed monograph and all new data and information submitted pursuant to paragraph (a)(6) of this section, all objections submitted on the tentative final monograph and all new data and information and comments submitted pursuant to paragraph (a)(7) of this section, the complete record of any oral public hearing conducted pursuant to paragraph (a)(8) of this section, all other comments requested at any time by the Commissioner, all data and information for which the Commissioner has reopened the administrative record, and all other material that the Commissioner includes in the administrative record as part of the basis for the Commissioner's decision.

* * * * *

(12) *Amendment of monographs.* (i) The Commissioner may propose on the Commissioner's own initiative to amend or repeal any monograph established pursuant to this section. Any interested person may petition the Commissioner for such proposal pursuant to § 10.30 of this chapter. The Commissioner may deny the petition if the Commissioner finds a lack of safety or effectiveness employing the standards in paragraph (a)(4) of this section (in which case the appeal provisions of paragraph (a)(11) of this section shall apply), or the Commissioner may publish a proposed amendment or repeal in the **Federal Register** if the Commissioner finds general recognition of safety and effectiveness employing the standards in paragraph (a)(4) of this section. Any interested person may, within 60 days after publication of the proposed order in the **Federal Register**, file with the Dockets Management Branch, Food and Drug Administration, written comments in quadruplicate. Comments may be accompanied by a memorandum or brief in support thereof. All comments may be reviewed in the Dockets Management Branch between the hours of 9 a.m. and 4 p.m., Monday through Friday. After reviewing the comments, the Commissioner shall publish a final order amending the monograph established under the provisions of paragraph (a)(9) of this section or withdraw the proposal if comments opposing the amendment are persuasive. A new drug application may be submitted in lieu of, or in addition to, a petition under this paragraph.

(ii) A new drug application may be submitted in lieu of a petition to amend the OTC drug monograh only if the drug product with the condition that is the subject of the new drug application has not been marketed on an interim basis (such as under the provisions of paragraph (a)(6)(iii) of this section), all clinical testing has been conducted pursuant to a new drug application plan, and no marketing of the product with the condition for which approval is sought is undertaken prior to approval of the new drug application. The Food and Drug Administration shall handle a new drug application as a petition for amendment of a monograph, and shall review it on that basis, if the provisions of this paragraph preclude approval of a new drug application but permit the granting of such a petition.

* * * * *

Effective date. This regulation shall be effective November 30, 1981.

(Secs. 201, 502, 505, 701(a), 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055 (21 U.S.C. 321, 352, 355, 371(a)))

Dated: July 7, 1981.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Dated: September 8, 1981.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 81-28168 Filed 9-28-81; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 80N-0295]

Over-the-Counter (OTC) Drug Review Policy Statement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces the policy the agency intends to use concerning: (1) the submission and review of proposed protocols to evaluate an ingredient or condition in the over-the-counter (OTC) drug review, (2) meetings with industry or other interested persons, (3) communications by the agency on submissions of test data and other information, and (4) maintenance of a public record involving these activities.

DATE: Comments by November 30, 1981.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule revising the procedural regulations in 21 CFR 330.10 for revising and classifying OTC drugs to delete the provision that authorizes the marketing of a Category III ingredient or other condition in an OTC drug product after a final monograph is established. This action is being taken to conform to the holding and order of the United States District Court for the District of Columbia in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). this revision in the regulations will affect the time period during which new data may be submitted to FDA to support the inclusion in a final monograph of a condition not classified in Category I in a proposed or tentative final monograph.

When FDA issued the OTC drug review regulations in 1972, it concluded that Category III testing should not be required until after publication of the applicable final monograph. Because of the court decision in *Cutler* v. *Kennedy, supra,* any testing necessary to resolve the issues that resulted in a condition not being classified in Category I, and submission of the test data or other available data to FDA to support inclusion of the condition in a final monograph, must be done during the OTC drug rulemaking process, before the establishment of a final monograph.

Under the current OTC drug review procedures, new data may be submitted as part of the comments to a panel report and proposed monograph. After the administrative record has closed, new data or information not previously submitted for inclusion in the administrative record may be submitted for inclusion only with a petition to the Commissioner requesting that the administrative record be reopened to include such material. In the past, such data and information received prior to the publication of a tentative final or final order have been addressed in he appropriate order.

Under the new procedures described in the final rule published elsewhere in this issue of the **Federal Register**, the agency's decision contained in a tentative final monograph will be based solely on the administrative record developed through the 90-day comment and 30-day rebuttal comment period following the proposed monograph. New data and information may be submitted after the 90-day comment period, but will be considered only after the administrative record is reopened following publication of a tentative final monograph. After publishing the tentative final monograph, FDA will reopen the administrative record for 12 months to permit interested persons to submit new data and information in support of the safety and effectiveness of any condition reviewed by a panel and not classified by the agency in Category I. Following a 2-month rebuttal comment period, the administrative record will be closed, and the agency's decision on the conditions to be included in a final monograph will be based solely on the administrative record developed throughout the entire OTC rulemaking period. Any data received by FDA after closing of the administrative record following the tentative final monograph will ordinarily be handled after publication of the final monograph as a petition to amend the monograph, unless the Commissioner finds that good cause has been shown that warrants earlier consideration.

While manufacturers have not been required under current regulations to conduct Category III testing until after completion of the OTC drug administrative procedures, i.e., publication of the final monograph, some firms have conducted such testing during the course of the review and have submitted the data as comments to a published panel report and proposed monograph or as a petition after the comment/reply comment period for the proposed monograph had closed. In the past, such testing did not have to be conducted until a final monograph had been published, and FDA did not comment on the results of this testing until a tentative final monograph was published. Likewise, data were sometimes submitted after a tentative final monograph was published, and FDA did not comment on these data until a final monograph was published. Although, in some instances, FDA may have completed its review of data at an early date, the agency's evaluation of that data would not be made public until the agency had completed its review of all data in the administrative record and had published its conclusions in either a tentative final or final monograph.

Under the revised OTC procedural regulations, all Category III testing must be completed prior to publication of a final monograph, if a manufacturer is interested in upgrading a condition to Category I status before the establishment of a final monograph. Because of the importance of early testing under the new procedures, manufacturers wish to be informed of the status of data previsouly submitted before initiating further studies. Providing this information to interested persons as the agency's reviews of these data are completed should result in earlier testing, where necessary, and the submission of the results earlier to FDA. To the extent possible, the agency plans to inform manufacturers of any tentative determination it has reached that additional data are needed or that the data sumitted are adequate to establish Category I status so that further testing appears unnecessary. Announcing these decisions early in the process will also benefit consumers because additional testing will be encouraged when it is needed, and consumers will know at an earlier date what ingredients have been tentatively recommended for upgrading to Category I status.

FDA staff will also meet with manufacturers, as necessary and as agency resources permit, to discuss testing protocols. FDA hopes to provide this information at an early enough date so that manufacturers can complete any additional necessary studies and can submit the data in the most expeditious fashion possible. Manufacturers should be aware though that their obligation to submit the data necessary to support the movement of a Category III condition to Cateogry I is independent of any information provided by the agency.

Similarly, the agency will not delay the OTC drug review in order to provide this "feedback," but will proceed to the next appropriate publication as soon as it is possible to do so under the procedures detailed in the revised OTC drug procedural regulations published elsewhere in this issue of the **Federal Register.**

FDA will meet with industry representatives at their request to provide information on data already submitted to FDA, to consult on testing guidelines for those conditions which industry is interested in upgrading, and to advise industry on the adequacy of their proposed testing protocols. Any communications between the agency and industry on these matters may continue outside the formal comment periods and will be part of the public record.

Further details are described below.

Protocols and Test Data

All proposed testing protocols and test data will be part of the public record and should be submitted in four copies to the Dockets Management Branch, FDA (address above), in accordance with the OTC drug review administrative procedures in § 330.10. All submissions should make reference to the appropriate docket number. Copies of any acceptable protocols or testing guidelines will also be placed in the Dockets Management Branch under the appropriate docket numbers. Any information that the agency provides sponsors on these test data and protocols will also be publicly available and will be placed in the Dockets Management Branch.

Meetings

Any person wishing to meet with agency representatives to discuss a proposed protocol or data previously submitted to the agency may request such a meeting by contacting the Division of OTC Drug Evaluation (HFD–510) (address and phone number provided above), which is responsible for coordinating all meetings. All such meetings will be open to the public.

Whenever an agency employee meets with a firm, an individual, or group of persons and discusses testing protocols, or data previously submitted to the agency, the FDA employee will make a memorandum of that meeting and the memorandum will be placed in the Dockets Management Branch under the appropriate docket number.

Communications on Submitted Data

Communications to manufacturers concerning submitted data will be of two types. First, as the Bureau of Drugs (Bureau) reviews the data, staff members may find it necessary to request clarification of certain points or to request additional data from the sponsor. The agency employee may request the information by letter or by telephone. A copy of the letter to the manufacturer that submitted the data or a copy of a memorandum of telephone conversation will be placed in the Dockets Management Branch under the appropriate docket number. All data submitted in response to FDA's request for additional information must be submitted to the Dockets Management Branch.

Second, when the Bureau completes its review, it will make a tentative determination that the data submitted are or are not adequate to support a Category I status for the condition. Whenever possible, the Bureau plans to notify the sponsor that the data are inadequate or that it has made a tentative interim decision to recommend to the Commissioner that the condition be upgraded in the next publication of the monograph (tentative final or final monograph) so that further expenses of testing can be eliminated. A copy of the letter informing the manufacturer of the tentative interim decision will also be placed in the Dockets Management Branch so that all other interested manufacturers and consumers will be informed. The agency points out that the Bureau's decision to recommend upgrading of the condition to Category I is only tentative and could change at the time the tentative final or final monograph is published if new information becomes available or if the Commissioner does not accept the Bureau's recommendation. Manufacturers acting in reliance upon this tentative interim decision must act at their own risk.

Public Record

The Bureau of Drug's Division of OTC Drug Evaluation intends to make available in the Dockets Management Branch under Docket Number 80N–0295 a record of information provided to manufacturers so that the interested persons can be aware of all communications that the Bureau has made concerning any Category II or III conditions. Each month the Division of OTC Drug Evaluation will update the list which will itemize each letter, meeting, and protocol, providing the date of the item, the persons involved, and the docket number under which the detailed information may be found. Interested persons are advised to check the Dockets Management Branch routinely to keep informed.

It is important to note the impact of this policy regarding FDA review of data and information and consultation on protocols or testing guidelines. Under this policy a substantial number of communications between FDA and interested persons on the subject of Category III testing will occur and will become a part of the public record. These communications will not be included in the administrative record for the related OTC monograph unless the communication directly influences an agency decision on a particular matter in the monograph or provides the substantiation for the agency's decision on that matter. For example, a protocol or test guideline would not normally become part of the administrative record, but the results of the study, which may also be the subject of one of these communications, would be included in the administrative record because it would be one of the bases for the Commissioner's final decision on the ingredient.

Notice and comment is not necessary before issuing this policy statement. (See 5 U.S.C. 553(b)(B).) Furthermore, the purpose and major aspects of this policy statement were described in the preamble to the May 13, 1980, proposed rule (45 FR 31422) on the agency's Category III regulations for which a final rule is published elsewhere in this issue of the **Federal Register.** It would also be contrary to the public interest to delay implementing the policy described in this policy statement.

Interested persons may, on or before November 30, 1981, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this policy statement. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Such comments will be considered in determining whether amendments or revisions to the policy statement are warranted. Received comments will be incorporated into the public file on the statement and may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 7, 1981.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Dated: September 8, 1981.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 81-28108 Filed 9-28-81; 8:45 am]

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federal register

Tuesday
September 29, 1981

Part V

Architectural and Transportation Barriers Compliance Board

Minimum Guidelines and Requirements for Accessible Design; Proposed Regulations; Extension of Comment Period

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1190

[ATBCB Docket No. 81-G-1]

Minimum Guidelines and Requirements for Accessible Design; Extension of Comment Period

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Extension of comment period on proposed rule.

SUMMARY: On August 4, 1981, the Architectural and Transportation Barriers Compliance Board (ATBCB or the Board) published in the Federal Register a notice of proposed rescission of the Board's minimum guidelines and requirements for standards for accessibility and usability of federal and federally-funded buildings adopted on January 6, 1981. Several individuals and organizations have requested additional time for the submission of comments. In order to provide additional time for comment, the period for comment is extended to November 6, 1981.

DATE: Comments must be postmarked on or before November 6, 1981.

ADDRESSES: Send comments to: Charles D. Goldman, General Counsel, Rulemaking Docket 81-G-1, Architectural and Transportation Barriers Compliance Board, Room 1010, 330 C Street, SW., Washington, D.C. 20202-2101. Comments received will be available for public inspection in Room 1014 from 9 a.m. to 5:30 p.m., Monday through Friday. Copies of this notice are available on tape for those with visual impairments. These may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: For additional copies of this notice of extension, of the notice of proposed rulemaking published on August 4, 1981 (46 FR 39764), and of the ATBCB Minimum Guidelines and Requirements for Accessible Design (36 CFR Part 1190), contact Mr. Larry Allison, Director, Office of Public Information, (202) 245-1591 (voice or TDD), 330 C Street, SW., Room 1010, Washington, D.C. 20202-2101.

For information on the applicability, scoping and technical provisions of the Board's Minimum Guidelines and Requirements for Accessible Design (36 CFR Part 1190) and for information on questions contained in this notice of extension, contact Ms. Sally Free, Office of Technical Services, (202) 472-2700 (voice), 330 C Street, SW., Room, G-115D, Washington, D.C. 20202-2101, or Mr. Charles D. Goldman, General Counsel (202) 245-1801 (voice or TDD), 330 C Street, SW., Room 1010, Washington, D.C. 20202-2101.

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board has identified portions of its January, 1981, regulation, Minimum Guidelines and Requirements for Accessible Design (36 CFR Part 1190) on which specific comments are requested. Such items include parking and passenger loading zones, entrances, elevators, toilet and bathing facilities, alarms, listening systems, additions, alterations, leases, special use facilities, and residential structures.

The Board emphasizes that it seeks public comments on all parts of the Guidelines and Requirements and specifically seeks comments on which sections of this regulation should be retained, which sections should be modified and which sections should be reserved. The Board also seeks comments on the clarity and format of the regulation.

The Architectural Barriers Act requires that buildings and facilities be "readily accessible" 42 U.S.C. 4155. Ready access is a high standard, more than "reasonable access." Some Board members are concerned that some requirements contained in the ATBCB Minimum Guidelines and Requirements for Accessible Design are too onerous, while others feel that some requirements do not go far enough.

The Board would welcome comments on the subject of the degree of specificity in the Minimum Guidelines and Requirements and any legal implications in the approaches taken by the Board. The Board is also interested in comments on whether it has provided sufficient access, to much access, or not enough access, and what, if any, appropriate modification(s) might be made.

The ATBCB is concerned that its Minimum Guidelines and Requirements provide ready access and use to federal and federally funded buildings in a cost effective manner. The Board seeks information on which sections of the regulation produce a cost savings, which create additional costs, and which have no cost impact. Comments are sought as to the extent to which cost should be considered in providing access to federal and federally funded buildings and facilities. The public is invited to submit alternatives to current requirements which might provide ready access and use in a more cost effective manner.

The Board requests that comments submitted in response to this notice include citations to any background materials, source documents, personal or field experience, cost data, and other information providing a basis for the response. The section numbers and paragraph letters cited in the questions contained in this notice correspond to the particular section/paragraph addressing that subject in the guidelines and requirements.

1. § 1190.31(b) Parking and passenger loading zones. The following table included in the Minimum Guidelines and Requirements applies to both visitor and employee parking. Are any changes necessary—for example, should the number of required accessible spaces be increased, decreased, or remain the same?

Total parking in lot	Required minimum number of accessible spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	(1)
Over 1,000	(2)

[1] 2 percent of total.
[2] 20 plus 1 for each 100 over 1,000.

2. § 1190.31(h) Entrances. The Board's Minimum Guidelines and Requirements provide that when a new building or facility is designed and constructed having entrances which normally serve transportation facilities, passenger loading zones, parking facilities, taxi stands, public streets, interior vertical access, and different sides of the facility, that at least one entrance serving each such function shall be accessible. Should the number of accessible entrances be increased, decreased, or remain the same?

3. § 1190.31(f) Elevators. In new construction, the ATBCB Minimum Guidelines and Requirements provide that all levels or floors of a building or facility be accessible and that each elevator serving those floors or levels be accessible. The Board seeks additional comments on the number of elevators in a new building that should be accessible; the distance between elevator banks containing the accessible elevators(s) if all elevators in the building are not accessible; and any problems/benefits which may result if all elevators are not accessible. The Board also would welcome cost information attributable directly to the

installation and maintenance of a mass produced accessible elevator which would otherwise not be incurred by an inaccessible model.

4. § 1190.31(k) Toilets and bathing facilities. For new construction, the ATBCB Guidelines and Requirements provide that at least one accessible fixture and accessory (*e.g.*, water closet, lavatory) in each toilet room be accessible. Should more than one accessible fixture be provided in each toilet room? Concern has been expressed that additional square footage may be required in some toilet rooms to make them accessible and this could result in additional costs. Comments addressing this concern would be helpful. In addition, should the Board provide that a certain number or percentage of the toilet rooms be accessible, and, if so should a maximum distance between such accessible toilet rooms be established? Should certain types of facilities be exempt from these requirements?

5. § 1190.31(n) and 1190.180 Alarms. The guidelines and requirements provide that if an audible alarm is provided in new construction, then a visual alarm device shall also be used. The Board seeks advice on other methods to alert physically handicapped persons in an emergency. For example, where is the best location to install a visual alarm system? Should an occupant emergency organization plan be permissible as an alternative? Once special devices are approved for use, should they be required to go through case-by-case approvals?

6. § 1190.32 Additions. Section 1190.32 requires that if an addition is made to a facility, either the addition or the existing structure must provide an accessible entrance and accessible route so that the addition is accessible and usable by handicapped persons. Such a requirement may sometimes necessitate alteration of parts of an existing structure. Should the regulation continue to require an accessible route to the new addition even if such access would necessitate alteration of the original structure; or should an accessible route be provided only if and when the existing structure is altered at a later date; or should the existing structure be altered in its entirety at the time the addition is made so that the entire facility is totally accessible?

7. § 1190.33(a)(2) Vertical Access. The ATBCB Minimum Guidelines and Requirements provides that an alteration of stairs and escalators is to be treated as an alteration of the building's system for vertical access so that accessibility is provided to all levels of a building or facility. The Board seeks recommendations on whether this provision should apply to all facilities or if some facilities should have special requirements developed to meet their particular needs. If so, please indicate the type of facility and the basis of the response.

8. § 1190.33(a)(3) Alteration of a single element. Section 1190.33(a)(3) provides that if alterations of single elements, when considered together, amount to an alteration of a space of a building or facility, the space shall be made accessible. For example, if a water closet and lavatory are altered in a toilet room, under current requirements, the toilet room itself would probably be required to be altered to make the toilet room accessible. The Board requests public comment on the appropriateness of this provision as it now exists or whether it should be clarified or modified.

9. § 1190.33(b) Fifty percent rule. Section 1190.33(b) requires that if the total cost of all alterations for a building or facility within any twelve month period is 50 percent or more of the building's value, then the altered building is required to meet certain basic accessibility requirements—that is, at least one accessible route, and at least one accessible toilet facility on each substantially altered floor with a minimum of one accessible toilet facility in each altered building must be provided. Should such a percentage of the building's value be used to trigger basic accessibility requirements and, if so, should this percentage be larger, smaller, or the same percentage of the building's value contained in the present requirements? Is an alteration that costs 50 percent or more of the building's whole value sufficient to consider the altered building as "new construction" and thus necessitate additional alterations to the existing structure? Should criteria other than a percentage of the cost of alterations to the building's value be used to trigger additional accessibility requirements?

10. § 1190.34 Leases. Are the present requirements contained in § 1190.34 Leases sufficient or should modification in this section be considered? For example, should additional factors, such as usage classification, square footage of the facility, size of the population to be served, or other similar criteria be used in determining the applicability of the leasing provisions?

11. Subpart E—Special Building or Facility Types or Elements. The Guidelines and Requirements as issued in January, 1981, may in the future provide the basis for special use requirements which will then be applicable to the development of standards for special use buildings and facilities issued under the Architectural Barriers Act. Particularly with alterations, in certain types of structures, such as historic buildings, transit stations, schools, and hospitals, achieving ready access may necessitate greater creativity from both an engineering and financial perspective. The Minimum Guidelines and Requirements apply to the generic or common features of a structure. Subpart E when developed should contain provisions applicable for unique features of special use buildings. Are there particular building types that need special treatment? Commenters are encouraged to share their views on the current ATBCB approach and suggest alternatives.

12. Residential Structures. Agency provided information indicates barrier free residential structures for federally constructed and funded public housing can be expensive, particularly in multi-unit facilities or special types, such as townhouses or garden apartments. Should the current ABCB Minimum Guidelines and Requirements apply to the common or public areas of the facility, such as lobbies, recreational facilities and laundries? Should they apply to all units, a percentage of the units, or not at all to publically funded residential structures? Are there special types of such residential structures where only one level of units should be accessible?

Dated: September 22, 1981.

By vote of the Board.

Mason H. Rose,

Chairperson, Architectural and Transportation Barriers Compliance Board.

Wm. Bradford Reynolds,

Vice Chairperson, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 81-28322 Filed 9-28-81; 8:45 am]

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Federal Register

Vol. 46, No. 188

Tuesday, September 29, 1981

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Library and Public Inspection Desk	633-6930
Scheduling of Documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235
Privacy Act Compilation	523-3517
United States Government Manual	523-5230

SERVICES

Agency services	523-3408
Automation	523-3408
Dial-a-Reg	
Chicago, Ill.	312-663-0884
Los Angeles, Calif.	213-688-6694
Washington, D.C.	202-523-5022
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public briefings: "The Federal Register—What It Is and How To Use It"	523-5235
Public Inspection Desk	633-6930
Regulations Writing Seminar	523-5240
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

43823-43952 1
43953-44146 2
44147-44414 3
44415-44732 4
44433-44974 8
44975-45108 9
45109-45320 10
45321-45590 11
45591-45746 14
45747-45924 15
45925-46106 16
46107-46278 17
46279-46558 18
46559-46780 21
46781-46874 22
46875-47052 23
47053-47206 24
47207-47434 25
47435-47530 28
47531-47746 29

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

476 44733

Proposed Rules:

470 47080

3 CFR

Proclamations:

4855 44975
4856 45109
4857 45925
4858 46279
4859 46559

Executive Orders:

5327 (Amended by PLO 5988) 44984
August 18, 1904 (Revoked by PLO 5993) 45137
June 30, 1916 (Revoked by PLO 5992) 45132
July 17, 1916 (Revoked by PLO 5987) 44984
October 30, 1916 (Revoked by PLO 5992) 45132
April 11, 1917 (Revoked by PLO 5992) 45132
December 5, 1917 (Revoked by PLO 5992) 45132
September 6, 1918 (Revoked by PLO 5992) 45132
May 17, 1919 (Revoked by PLO 5992) 45132
May 24, 1919 (Revoked by PLO 5992) 45132
June 5, 1919 (Revoked by PLO 5991) 45131
April 17, 1926 (Revoked in part by PLO 5985) 44983
11331 (Revoked in part by EO 12319, effective Oct. 1, 1981) 45591
11345 (Revoked by EO 12319, effective Oct. 1, 1981) 45591
11371 (Revoked by EO 12319, effective Oct. 1, 1981) 45591
11578 (Revoked by EO 12319, effective Oct. 1, 1981) 45591
11658 (Revoked by EO 12319, effective Oct. 1, 1981) 45591
11659 (Revoked by EO 12319, effective Jan. 1, 1982) 45591
11958 (Amended by EO 12321) 46109
12113 (Revoked by EO 12322) 46561
12163 (Amended by EO 12321) 46109
12232 (Revoked by EO 12320) 46107
12319 45591
12320 46107
12321 46109
12322 46561
12323 47207

Presidential Determination:

(No. 81-12 of Sept. 4, 1981) 45927

Administrative Order:

Memorandum of September 10, 1981 45321

4 CFR

81 47053

5 CFR

Ch. I 44415
213 45323
531 ..... 43823, 45747
771 44415
890 46332
891 47209

Proposed Rules:

470 46330

7 CFR

0 ..... 47209, 47210
29 47212
160 47053
246 ..... 43823, 47422
271 44712
272 ..... 44712, 46781
273 ..... 44712, 46281
274 44712
275 46781
277 44712
282 46282
301 44144
718 47213
800 ..... 43824, 47042
905 47056
908 ..... 44147, 45111, 46111, 46784, 47057
910 ..... 44416, 45323, 45324-46286, 47057, 47215
915 43953
932 44733
944 44733

967 44977
981 ..... 43824, 47058
991 47058
1002 45325
1065 44978
1079 43974
1135 44147
1427 ..... 47059, 47060
1446 45111
1701 ..... 46287, 47215, 47531
1980 45929
2852 45326
2900 47216

Proposed Rules:

Ch. IV 47231
29 44761
101 44680
102 44680
103 44680
104 44680
106 44680
107 44680
108 44680
111 44680
210 ..... 44452, 45354, 45776
220 ..... 44452, 45354, 45776
226 ..... 44452, 45354, 45776
907 44762
948 45962
958 47585
982 47080
993 47461
1001 43980
1006 43995
1011 ..... 43997, 45354, 47588
1012 43995
1013 43995
1046 ..... 45354, 47588
1079 46959
1093 45352
1097 47588
1098 ..... 45354, 46813, 47081, 47588
1102 47588
1108 47588
1139 45776
1701 ..... 44472, 45783–45784, 47234
2806 47588
2852 ..... 43836, 43838, 44473, 45357

8 CFR

108 45116
204 46563
207 45116
209 45116
212 ..... 45326, 45328
214 45933
235 43826
236 43955
242 43955
251 43826

9 CFR

92 ..... 46563, 46784
303 46287
307 46111
331 ..... 43827, 43956, 44417
350 46111
351 46111
354 46111
355 46111
362 46111
381 ..... 43827, 46111, 46287

Proposed Rules:

112 45616

10 CFR

Ch. II 46289
30 ..... 44418, 46875
31 44149
40 44418
50 44734
70 44418
150 44149
800 44686

Proposed Rules:

Ch. I 44992
Ch. II 44192
4 46582
15 46960
35 43840
50 ..... 46333, 46587
70 ..... 45144, 46333
73 46333
205 44696
211 45151
486 46589
590 44696

11 CFR

Proposed Rules:

114 ..... 44964, 45784

12 CFR

8 47442
11 45747
205 46876
217 ..... 44420, 46898
509b 46894
526 46300
532 46564
545 46300
553 45593
556 45120
561 45593
563 46300
701 ..... 43829, 44421, 44422, 45329, 46303
720 45330
721 47435
723 47435
724 47435
1204 45121

Proposed Rules:

30 46964
701 45365
720 45365

13 CFR

115 46113
122 46307

14 CFR

21 ..... 44735, 46118, 47061
39 ..... 44153, 45124, 45593, 45598, 46121–46123, 46565, 46566, 47062, 47063, 47442
71 ..... 44154–44157, 44737–44739, 45598, 46124, 46125, 47064, 47084
73 47065
75 46125
91 ..... 44424, 44740, 45125
95 44748
97 ..... 44753, 46568
99 46569
221 46787
221a 43957
252 45934
291 43958
296 43958
297 43959
298 43959
372 43959
374 43960
1204 45127

Proposed Rules:

1 45256
21 ..... 45256, 45617, 45619
39 ..... 46139, 46140, 46590, 47082
43 45256
45 45256
47 45256
61 45256
63 45256
65 45256
71 ..... 44193, 44763, 44764, 45620, 46141, 46142, 46590, 46591, 47083, 47084, 47464
75 ..... 44194, 45154
91 45256
93 45256
99 45256
121 45256
123 45256
125 45256
127 45256
133 45256
135 45256
137 45256
141 45256
293 46592
298 46592
323 46592
377 46338
Ch. I 47465

15 CFR

373 47066
376 47066
379 43961
385 47067
390 47066
399 ..... 43961, 45939
970 45890

Proposed Rules:

Ch. III 43842
935 44764
936 44764

16 CFR

3 45749
4 45749
13 ..... 43830, 43962, 46900
1201 45750
1208 45940

Proposed Rules:

Ch. II 45621
13 ..... 44765, 47085, 47088 47234, 47619
1205 44992
460 47236
1208 45963

17 CFR

202 47531
210 46795
240 43962

Proposed Rules:

201 44194
230 44194
240 ..... 44194, 44775

18 CFR

270 45599
271 46900–46904
281 45127
282 ..... 43830, 45752, 47443
375 45755

Proposed Rules:

2 45624
35 45624
154 44777
271 ..... 43843–43847, 45155, 46142, 47239, 47466
711 45368
713 45368
714 45368
716 45368

19 CFR

18 45600
112 45600
151 46310

Proposed Rules:

24 44195
101 45625
111 44195
141 44195
148 46594
151 45128
162 45626

20 CFR

404 (2 documents) 43963, 45756, 47444
410 45942
416 47445
675 44730
676 44730
677 44730
680 44730

Proposed Rules:

214 43998
218 43998
232 43998
237 43998

21 CFR

5 ..... 44754, 46310
73 47532
74 47216
81 47533
135 44432
175 46795
177 46795
178 47217
184 44434
193 ..... 43964, 45130, 47533
330 47730
436 46311
442 46311
444 45332
446 46311
449 46311
450 46311
452 44442
455 ..... 46311, 46314
510 45333
520 ..... 44443, 46314, 46315, 47218
522 43831
524 44755
558 ..... 43832, 45333, 46796–46798, 47534
561 47535
680 43832
1308 46799

Proposed Rules:
105 46340
203 45785
452 47240
606 47623
1308 45156

22 CFR
Ch. XIV 45854, 45881
201 47067

23 CFR
476 45602
Proposed Rules:
140 45744
646 45744
740 45627

24 CFR
115 46316
201 ..... 44444, 46905
203 ..... 44157, 44444, 46905
205 ..... 44444, 46905
207 ..... 44157, 44444, 46905
213 ..... 44444, 46905
220 ..... 44157, 44444, 46905
221 ..... 44444, 46905
232 ..... 44444, 46905
234 ..... 44444, 46317, 46905
235 ..... 44444, 46905
236 ..... 44444, 46905
241 ..... 44444, 46905
242 44444
244 ..... 44444, 46905
570 45603
3282 46126

25 CFR
120 47536
700 46801

26 CFR
31 46908
34 46908
Proposed Rules:
1 46966
31 46966

27 CFR
1 46910
4 46910
5 46910
7 46910
9 ..... 46318, 46910
13 46910
18 46910
19 46910
47 46910
55 46910
71 46910
72 46910
170 46910
174 46910
178 46910
194 46910
195 46910
196 46910
197 46910
200 46910
211 46910
212 46910
213 46910
231 46910
240 46910
245 46910
250 46910
251 46910
252 46910
270 46910
275 46910
285 46910
290 46910
296 46910
Proposed Rules:
5 44000
18 ..... 46340, 47467
19 44000
170 44000
173 44000
194 ..... 44000, 46347
240 ..... 46340, 47467
250 ..... 44000, 46347
251 ..... 44000, 46347

28 CFR
Proposed Rules:
13 46968
16 44408
18 46144

29 CFR
56 ..... 46776, 46803
102 45922
1625 47724
1910 ..... 45333, 45758
1952 ..... 46320, 46807
2530 ..... 43833, 47584
2619 45761
2640 46127
2642 46127
2643 46127
2673 43965
Proposed Rules:
225 47240
800 43848
1620 43848
1910 47241
2530 43852

30 CFR
221 44755
716 ..... 47528, 47720
785 47720
Proposed Rules:
Ch. VII 47467
251 44994
270 44778
725 46744
730 46596
731 46596
735 46744
800-809 45082
832 46596
904 46350
916 46350
920 ..... 44475, 46596
925 46350
950 44995

32 CFR
57 47090
199 ..... 46570, 47539
212 43965
706 ..... 46322-46324, 46923, 46924, 47219
1900 46808
Proposed Rules:
57 45368
199 ..... 46597, 47624

33 CFR
117 44756
Proposed Rules:
109 44779
110 ..... 44779, 44782
204 44006
402 45318

34 CFR
350 45300
351 45300
352 45300
353 45300
354 45300
355 45300
356 45300
362 45300
510 44140
605 46925
606 43966

36 CFR
810 45334
Proposed Rules:
211 46969
296 44007
1190 ..... 45376, 47744

37 CFR
Proposed Rules:
307 45785

38 CFR
3 47539
36 ..... 46571, 46572
Proposed Rules:
1 45785

39 CFR
960 45943
Proposed Rules:
111 ..... 44998, 45787
3001 45376

40 CFR
50 44159
51 44159
52 ..... 43968, 43970, 44172-44188, 44447, 44448, 44757, 44979, 45130, 45335, 45337, 45605-45610, 45762, 46130-46133, 46809, 47069, 47219, 47450, 47451, 47544, 47545
58 44159
62 43833
81 ..... 46325, 46573, 46574, 46926, 47220, 47453
86 ..... 46575, 47222
122 47433
123 46576
180 ..... 43971, 46579, 47223, 47224, 47546, 47547
256 47048
257 47048
261 ..... 44970, 47426
267 47433
413 43972
Proposed Rules:
33 45963
35 45963
52 ..... 43855, 44476, 44783-44785, 45157-45160, 45378-45383, 45628, 46351, 47241, 47469, 47470, 47624
60 46813
62 45160
65 44196
80 44477
81 ..... 44787, 45162
123 47626
125 46597
163 44197
180 ..... 45162, 47242

41 CFR
Ch. 1 45948
1-1 46931
1-4 46931
101 43973
101-39 45948
101-43 45950
101-45 46325
101-47 45950
Proposed Rules:
60-1 46815
60-2 46815
60-4 46815
60-30 46815
60-250 46815
60-741 46815
101-11 44788
101-38 45163
101-41 47472

42 CFR
Proposed Rules:
447 45964

43 CFR
35 45951
2710 44677
3100 ..... 45887, 46810
3110 ..... 45887, 46810
9260 46810
Public Land Orders:
1608 (Amended by by PLO 5979) 44188
1930 (Revoked by PLO 5986) 44983
4522 (Amended by PLO 5988) 44984
5868 (Corrected by PLO 5983) 44450
5979 44188
5980 43974
5981 44189
5982 44189
5983 44450
5984 44984
5985 ..... 44983, 46134
5986 44983
5987 44984
5988 44984
5989 ..... 44982, 46134, 47548
5990 45131
5991 45131
5992 ..... 45132, 46134
5993 45137
5994 45611
5995 46134
Proposed Rules:
2650 45164
3200 43950

44 CFR
11 46934
64 ..... 45763, 45766, 47071 47225, 47227

65.....45768, 45769, 46810, 46935, 47454
67.....46936–46948
200.....45137
201.....45137
205.....45137
300.....47455

Proposed Rules:
67.....46970, 47472–47476, 47627, 47644
205.....46973

45 CFR

95.....46134
205.....46750
206.....46750
224.....46776, 46803
233.....46750
234.....46750
235.....46750
238.....46750
239.....46750
1000.....44189
1005.....44189
1006.....44189
1012.....44189
1015.....44189
1026.....44189
1062.....44189
1063.....44189
1176.....45953

46 CFR

Ch. II.....47458
56.....45611
502.....45138
510.....45612
536.....44190
537.....46136
527.....47229

Proposed Rules:
Ch. I.....45631
251.....45164
538.....44998

47 CFR

0.....45342
13.....47229
22.....44758
73.....43975, 44190, 45140, 46326, 46327, 47229, 47456, 47457
74.....47229
90.....45953

Proposed Rules:
Ch. I.....47243
1.....44789
2.....45635
15.....44790, 44793
21.....45635
73.....44008–44012, 44478–44481, 45166–45170, 46147, 46352–46357, 47477–47480
74.....45635
90.....46148
94.....45635

49 CFR

Ch. 1.....47458
387.....45612, 47073
1033.....44190, 44450, 45774, 46580,
1100.....44191
1121.....45342
1206.....45959
1207.....45959
1244.....45141

Proposed Rules:
Ch. X.....44999, 45000
100–199.....44197
107.....47091
171.....47091
173.....44198, 45652, 47091, 47099
175.....45652
395.....44198
571.....44202, 45171, 46604
575.....47100
826.....44797
1033.....47101
1057.....44013
1241.....45966
1247.....45967
1310.....44482, 47481

50 CFR

12.....44759
14.....43834
20.....44760, 45098, 46542
23.....44460
27.....47230
32.....45142, 47548–47583
33.....47580
227.....43976
285.....44985, 45353
611.....44985, 47079
652.....44988
657.....47079
661.....43977, 44989, 45615, 45960
672.....44985

Proposed Rules:
Ch. I.....46358
12.....46605
13.....46361
14.....43857, 46361
16.....46361
17.....44960, 46361
23.....45172, 45652
32.....43858
33.....43853
611.....44203, 45656, 45969
655.....45174
656.....45174
657.....45174
674.....44203
662.....45969
674.....44203

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSIS**		DOT/FAA	USDA/FSIS**
DOT/FHWA	USDA/FSQS**		DOT/FHWA	USDA/FSQS**
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/MA*	MSPB/OPM		DOT/MA*	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

*Note: The Maritime Administration will begin Mon./Thurs. publication as of Oct. 1, 1981.

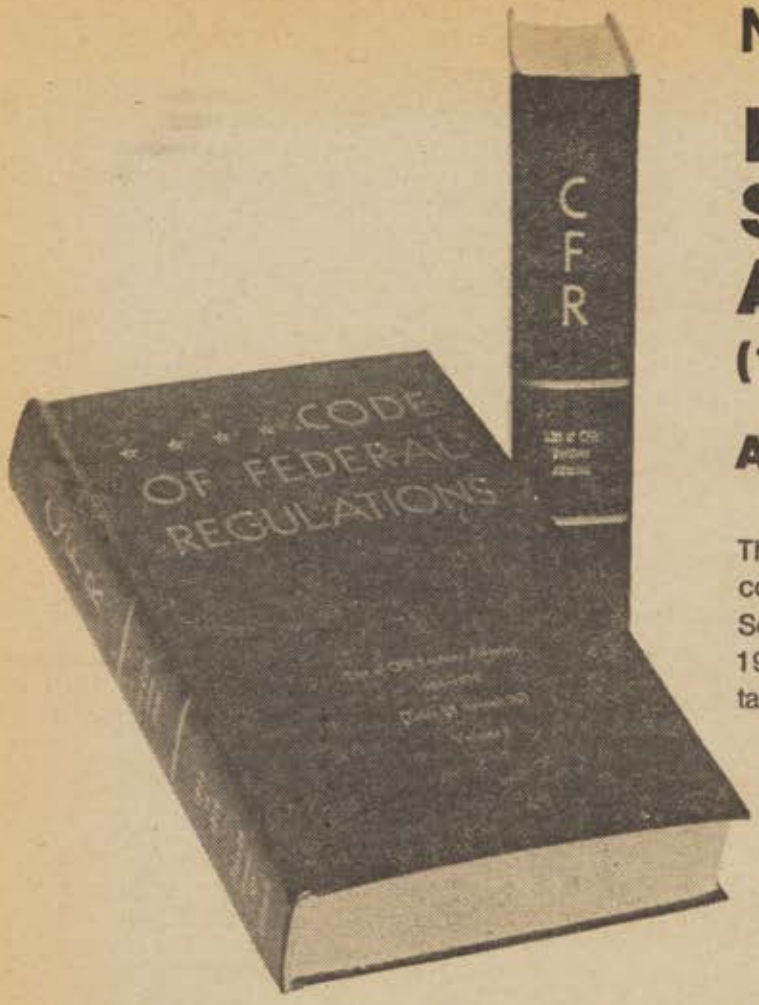
**Note: As of September 14, 1981, documents received from Food Safety and Inspection Service (formerly Food Safety and Quality Service) will no longer be assigned to the Tues./Fri. publication schedule.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing September 22, 1981





New Publication

List of CFR Sections Affected (1964 through 1972)

A Research Guide

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